No. 88-2035-CFX
Status: GRANTED

Title: Adams Fruit Company, Inc., Petitioner
v.
Ramsford Barrett, et al.

Docketed:
June 13, 1989

Court: United States Court of Appeals
for the Eleventh Circuit

See also:
89-929

Counsel for petitioner: Robinson,John W.

Counsel for respondent: Tribe,Lawrence H., Leto,Nora

Entry	Date	Note	Proceedings and Orders
1	Jun 13 1989	G	Petition for writ of certiorari filed.
2	Jul 12 1989		DISTRIBUTED. September 25, 1989
3	Jul 14 1989	X	Brief of respondents Barrett, et al. in opposition filed.
4	Jul 14 1989	G	Motion of National Council of Self-Insurers for leave to file a brief as amicus curiae filed.
5	Jul 14 1989	X	Brief amici curiae of American Farm Bureau Federation, et al. filed.
6	Oct 2 1989		Motion of National Council of Self-Insurers for leave to file a brief as amicus curiae GRANTED.
7	Oct 2 1989		Petition GRANTED.
			**********
10	Oct 27 1989		Record filed.
		*	Certified copy of original record and proceedings, 3 volumes, received.
8	Nov 15 1989		Brief of petitioner Adams Fruit Company, In.. filed.
9	Nov 15 1989		Joint appendix filed.
12	Nov 16 1989		Brief amici curiae of American Farm Bureau Federation, et al. filed.
13	Nov 16 1989		Brief amicus curiae of John I. Haas, Inc. filed.
14	Nov 16 1989		Brief of California Workers'Compensation Institute filed.
15	Nov 27 1989		SET FOR ARGUMENT WEDNESDAY, JANUARY 17, 1990. (2ND CASE)
16	Dec 8 1989		CIRCULATED.
17	Dec 15 1989	X	Brief amici curiae of Congressman William D. Ford, et al. filed.
18	Dec 18 1989	X	Brief of respondents Ramsford Barrett, et al. filed.
19	Dec 18 1989	X	Brief amici curiae of Texas, et al. filed.
21	Jan 9 1990	X	Reply brief of petitioner Adams Fruit Company, Inc. filed.
22	Jan 17 1990		ARGUED.

88-2035

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No. _____

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC., a Florida corporation,

Petitioners,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILLS, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether the Migrant and Seasonal Agricultural Workers Protection Act preempts the exclusive remedy of state workers compensation benefits for bodily injury.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Adams Fruit Company, Inc. respectfully petitions for a writ of certiorari to review an order of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The decision of the Court of Appeals of the Eleventh Circuit is reported at 867 F.2d 1305 (11th Cir. 1989) and is set out as Appendix A, p. 1a of the petition.

The order of the U. S. District Court of the Middle District of Florida, is set out as Appendix B, p. 16a.

JURISDICTION

The judgment of the Court of Appeals of the Eleventh Circuit was entered on March 15, 1989, and is attached as Appendix C, p. 20a of this petition. No rehearing was sought. Jurisdiction of this court is invoked under 28 U.S.C. §1254.

STATUTES AND REGULATIONS INVOLVED

Sections 1801, 1841, 1854, and 1871 of the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), 29 U.S.C. §1801 *et seq*. are set out as Appendix E, p. 31a of this petition.

U.S. Department of Labor Regulation, found at 29 C.F.R. §500.122(b) is set out as Appendix F, p. 36a of this petition.

Section 440.11 *Florida Statutes*, of the Florida Workers Compensation Statute, is set out as Appendix G, p. 37a of this petition.

Excerpts from the legislative history of AWPA, reprinted at 4 *U.S. Code & Adm.News* (1982), p. 4547 (House Rep. 97-885, no Senate report submitted) is set out as Appendix H, p. 38a of this petition.

STATEMENT OF THE CASE

The respondents, plaintiffs below, a group of farm workers employed by Adams Fruit, the Petitioners, were injured in an accident while being transported in an Adams Fruit van. Adams Fruit compensated these workers for their medical expenses and lost wages through workers compensation. Subsequently, these farm workers brought suit for statutory damages and additional actual damages for alleged record keeping and motor safety violations under the Migrant and Seasonal Agricultural Workers Protection Act [hereinafter AWPA], 29 U.S.C. §1801, *et seq.*, Appendix E, p. 31a. AWPA was created "To assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employees." 29 U.S.C. §1801, Appendix E, p. 31a. The farm workers alleged that they were entitled to damages for pain and suffering and loss of earning capacity for their injuries if these damages were greater

than the nominal statutory damages of $500 per Plaintiff per violation.

Adams Fruit filed a motion for partial summary judgment on the grounds that the exclusive remedy provisions of the workers compensation statute, Section 440.11, *Florida Statutes*, Appendix G, p. 37a, constituted a complete bar to these claims. The United States District Court for the Middle District of Florida granted a partial summary judgment to the Petitioner as to liability for alleged bodily injuries brought under the motor vehicle safety provisions of AWPA. *Barrett v. Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. Oct. 29, 1987), Appendix B, p. 16a. The order denied summary judgment concerning the miscellaneous alleged record keeping violations. These claims were subsequently settled and dismissed.

In reaching its decision, the Middle District of Florida relied on the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. denied*, ___ U.S. ___, 108 S.Ct. 163 (1987) Appendix D, p. 22a. *Roman* held that Congress was cognizant of state workers compensation laws when enacting AWPA and that AWPA was intended to mesh with state laws, not interfere with or supersede them. *Roman* also relied on this Court's decision in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382 (1966) that where a workers compensation remedy reasonably and fairly covered a group of workers, it was presumably the exclusive remedy.

These farm workers then appealed the partial summary judgment to the Eleventh Circuit Court of Appeals,

which reversed and remanded. In rejecting *Roman*, the Eleventh Circuit stated:

> We cannot agree with the fourth circuit that section 1871 compels a conclusion of non-preemption . . . We believe that by allowing workers compensation insurance to be used to satisfy the insurance or liability bond requirement of the Act, Congress did not thereby foreclose all possible methods by which state workers compensation law might be preempted.

Barrett v. Adams Fruit Company, Inc., 867 F.2d 1305, 1307 n.1 (11th Cir. 1989), Appendix A, p. 5a. At the same time, the Eleventh Circuit invalidated the Department of Labor regulation promulgated under AWPA which specifically stated:

> (b) Where a State workers compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Appendix F, p. 36a.

Adams Fruit Company, Inc. now petitions this court for a writ of certiorari to review the opinion below.

LOWER COURT JURISDICTION

Jurisdiction in the District Court was founded on 29 U.S.C. §1854 and 28 U.S.C. §1331 and §1337.

REASONS FOR GRANTING THE WRIT

POINT I

A TRUE, ACKNOWLEDGED CONFLICT NOW EXISTS BETWEEN THE HOLDINGS IN THE FOURTH AND ELEVENTH CIRCUIT COURTS OF APPEALS.

In its opinion below, the Eleventh Circuit held that AWPA preempted the exclusive remedy provisions of workers compensation law. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). Appendix A, p. 1a. At the same time, the Eleventh Circuit acknowledged a conflict with the Fourth Circuit Court of Appeals's conclusion of no preemption. *Id.* at 1306, 1307 n.1.

In *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. denied*, ___ U.S. ___ 108 S.Ct. 163 (1987), Appendix D, p. 22a, a migrant worker claimed damages from injuries which allegedly arose from being sprayed by pesticides while working in the defendant employer's fields. The plaintiff had filed a state workers compensation claim and also sought additional damages under AWPA. The District Court held that the worker's exclusive remedy was provided under the South Carolina workers compensation law.

As in the present case, the determinative issue presented on appeal was preemption. The Fourth Circuit concluded that AWPA was not intended to provide an additional remedy for an on-the-job injury in a situation where state workers compensation was available. In reaching this conclusion, the Fourth Circuit evaluated the language of AWPA itself, circuit and Supreme Court precedent, and the legislative historyof AWPA.

The Fourth Circuit noted AWPA language that "This chapter is intended to supplement state law, and compliance with this chapter shall not excuse any person from compliance with appropriate state law and regulation," 29 U.S.C. §1871, was a clear directive from Congress that AWPA did not preempt state workers compensation laws. *Id.* at 1118. *See* Appendix E, p. 35a. The Fourth Circuit found that Congress intended to preserve the workers compensation laws under §1841 of AWPA which addressed motor vehicle safety. Section 1841(c) provided that no liability insurance policy was required if an employer only transported his workers under circumstances where there was coverage under a state workers compensation law. *Id. See* Appendix E, pp. 32a-33a.

The *Roman* court recognized *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382 (1966) as significantly persuasive authority. In *Demko* a federal prisoner claimed he was injured during an assigned prison task and filed both a claim for compensation benefits under the Federal Employees Compensation Act and an award under the Federal Torts Claims Act. This Court denied the claim, basing its decision on the *Johansen* principle that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 385 U.S. 152, 87 S.Ct. at 384 (citing to *Johansen v. United States*, 343 U.S. 427, 72 S.Ct. 849 (1952)). *Demko* reasoned that, to hold otherwise, would give injured prisoners greater protection than all other government employees, "a congressional purpose not easy to infer." *Demko*, 385 U.S. at 384.

The *Roman* court found "nothing in the legislative history, which is found at 4 *U.S. Code & Adm. News* (1982),

p. 4547 (House Rep. No. 97-885, no Senate report submitted) or in the language of the [AWPA] statute which indicated that the South Carolina Workers Compensation Law, which does cover the plaintiffs, should not be the exclusive remedy to protect him from an on-the-job injury." *Id.* at 119. *See* Appendix H, p. 38a.

The *Roman* court also reasoned that to allow AWPA to have the type of supplemental effect claimed by the plaintiff migrant worker would give him a greater protection than other agricultural workers in the state covered by the state workers compensation law. In a footnote, the court admonished the plaintiff for seeking the benefits of the workers compensation statute, but seeking to escape the exclusivity provisions of the same law under which he claimed benefits. *Id.* at 1120 n. 4. Although the *Roman* case did not involve a motor vehicle injury, the court analogized that any on-the-job injury covered by workers compensation was exclusively within the ambit of that compensation. It did so by looking to the motor vehicle safety section of the AWPA, specifically 29 U.S.C. §1841(c), which was drafted to coincide with workers compensation policies when job-related motor vehicle accidents caused bodily injury.

On the other hand, the Eleventh Circuit in this case rejected the opinion of the Fourth Circuit and found that AWPA preempted the exclusive remedy provisions of Florida's workers compensation law. The Eleventh Circuit invalidated this Department of Labor regulation: "[w]here a state workers compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers compensation benefits are the exclusive remedy for loss under this

Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Appendix F, p. 36a.

The Eleventh Circuit found preemption based upon legislative history. The Eleventh Circuit, however, relied upon the history of the separate and repealed Farm Labor Contractor Registration Act (FLCRA) and not AWPA. In 1978, a bill was proposed which would have amended FLCRA to allow workers compensation benefits as a substitute for vehicle liability insurance. Congress rejected the amendment. Yet, the Eleventh Circuit has now determined that workers compensation exclusivity would frustrate Congressional intent of AWPA. In doing so, the Eleventh Circuit overlooked the controlling legislative history of AWPA, which *did* allow workers compensation to substitute for vehicle liability insurance.

POINT II

THIS CONFLICT ENDANGERS FARMERS AND CREATES INCONSISTENT RIGHTS AND REMEDIES FOR MIGRANT AND SEASONAL AGRICULTURAL WORKERS UNDER A SINGLE FEDERAL LAW.

Because of this conflict in the circuits and the uncertainty which it has engendered, it is now impossible for farmers across the nation to know to what extent they must protect themselves from the additional losses imposed by the Eleventh Circuit decision. If this conflict in the circuits is left unresolved, it will also create inequities between those farmers and those workers in states that require the purchase of workers compensation insurance for migrant and seasonal laborers and those that do not.

The extent of this problem is far-reaching. With certain narrow exceptions, workers compensation covers agricultural workers in 38 different jurisdictions across the United States. 4 *Larson's Workmen's Compensation Law*, App. A 4-1 to A 4-5 (1985 report). In the majority of these jurisdictions, workers compensation coverage is compulsory. Congress has told the farmer that if he has workers compensation coverage which protects his migrant and seasonal workers, "no additional insurance for damage to persons need be obtained." 4 *U.S. Code & Adm. News* (1982), p. 4547, House Rep. 97-885. Appendix H, p. 38a. [hereinafter *"House Report"*]. The Department of Labor has told the farmer that workers compensation is the exclusive remedy of the migrant and seasonal workers in cases of bodily injury or death. 29 C.F.R. 500.122(b), Appendix F, p. 36a. AWPA itself made clear the fact that it was not necessary for a farmer to purchase liability insurance for protection if workers compensation applied. 29 U.S.C. 1841(c), Appendix E, pp. 32a-33a.

The decision of the Eleventh Circuit penalizes the farmers who relied upon the governmental directives and provided workers compensation. Now, the farmers in states where workers compensation applies, as opposed to those states where it does not, are finding themselves exposed to new hardships. In Florida, they may be unprotected for extensive injury claims for non-economic losses which are not contemplated within workers compensation benefits. Since the statute of limitations has conceivably not yet run on many of these claims, the Florida farmer may have unavoidable, unlimited exposure for accidents which he justifiably believed were resolved by payment of workers compensation benefits.

Outside of Florida, with the exception of the Fourth Circuit, farmers cannot know with any certainty if they are at risk and need to purchase some new type of liability coverage (that may not even be in existence) which is specifically designed to cover claims over and above workers compensation benefits. Certainly, even if the Eleventh Circuit opinion was correct, the intent of AWPA was not for farmers to purchase workers compensation coverage and then proceed at their own risk for this additional extensive liability. At the same time, after spending a considerable amount of money to procure workers compensation coverage, the purchase of additional liability coverage confers an economic hardship that cannot be ignored given today's farm situation.

It may be impossible for farmers to find insurance carriers willing to write vehicle liability insurance for farm workers where workers compensation is also provided to those workers. In fact, the scarcity of carriers who would do so in the State of Florida was the prime concern of Representative Ireland, who originally sponsored the bill to incorporate workers compensation insurance into the amendments to FLCRA, AWPA's predecessor, and who stated that "Those [carriers] who do [provide such insurance] charge a rate three to four times higher than the normal one." *Farm Labor Contractor Registration Act: Hearings Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor,* 95th Cong. 2d Sess. 4 (1978), p. 34 [hereinafter *"Hearings"*].

This Court should resolve this inequity without delay. It should not be left to haphazard piece-meal litigation of this issue throughout the nation. This issue will present a recurring problem to both the farmers and

workers until it is corrected. In fact, the U. S. District Court of the District of Oregon has recently adopted the Eleventh Circuit preemption rationale in *Fletes v. John I. Hass, Inc.*, No. 89-85 FR (D. Ore. June 2, 1989). Appendix I, p. 41a. Similar litigation is sure to escalate with the widespread review of the publication of the decision of the Eleventh Circuit.

To allow this conflict to remain unresolved will have a devastating effect on the farmers of America. Because any court-imposed AWPA liability for damages beyond workers compensation is generally not considered an insured loss under most insurance policies, farmers have a tremendous potential exposure for non-insured claims under the Eleventh Circuit ruling. This is particularly true for current or future multiple catastrophic injuries for which a court or jury could award substantial pain and suffering or death benefit amounts.

The petitioner urges this Court to grant its petition for writ of certiorari to end this uncertainty and to establish uniformity across the nation regarding the insurance requirements necessary. Only an early resolution of this conflict will prevent farm owners' unwitting exposure to massive uncovered liability claims, avoid unnecessary duplication of insurance costs, and protect both the farmers and the workers by clarifying their rights and obligations under AWPA.

POINT III

THE DECISION OF THE ELEVENTH CIRCUIT IGNORES THE INTENT OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT AS EXPRESSED IN ITS LEGISLATIVE HISTORY AND DEFINED IN THE DEPARTMENT OF LABOR REGULATIONS.

A. The Statute

In its decision below, the Eleventh Circuit ignored the intent of AWPA, focused instead on its repealed precursor FLCRA, and misapplied FLCRA legislative history. Specifically, the court reasoned that because Congress rejected an amendment to FLCRA in 1978, which would have allowed workers compensation insurance to replace vehicular liability insurance, Congress never intended to make workers compensation an exclusive remedy for bodily injury under AWPA. This reasoning misconstrues both the thrust of the Congressional hearings surrounding the original proposed amendment to FLCRA and the intent of AWPA to effect a compromise.

The concern evident in the hearings on the proposed amendments to FLCRA was providing a "reasonable amount of insurance" and "reasonable protection" to agricultural workers involved in vehicular accidents on the job. *Hearings*, pp. 200-201. Congress did not intend to overinsure those workers already reasonably protected by workers compensation in some states. The concerns raised in the hearings did not involve workers compensation exclusivity. Instead, the legislators were concerned with the following: (1) seasonal workers did not come under workers compensation in some of the states where workers compensation applied to agricultural workers; (2) the employer-employee relationship may not have

been established while the agricultural workers were transported to the place of agricultural employment; (3) coverage varied from state to state; and (4) workers compensation may not apply to injuries occuring out of state. *Hearings*, p. 34, 54, 133. The hearings on the amendments to FLCRA proved that Congress knew what it was doing when it later passed AWPA, and Congress did include a special provision incorporating workers compensation into the statute.

In enacting AWPA, and repealing FLCRA, Congress affirmatively chose not to penalize certain types of employers by requiring them to overinsure workers who already had adequate coverage under state workers compensation law. Congress voiced its decision in the published legislative history of AWPA which states specifically "The Act further provides that in those situations where agricultural workers are transported and are covered by state workers compensation no additional insurance for damages to persons need be obtained." *House Report*, Appendix H, p. 39a. Congress intended that any employers whose workers were excluded from workers compensation coverage, for whatever reason, needed to provide protection for their workers through vehicle liability insurance.

The Eleventh Circuit's opinion consistently confuses the legislative intent of AWPA with that of its repealed predecessor, FLCRA. However, the intent of the two statutes were far from identical. This was pointed out repeatedly in both the House and Senate by the legislators who sponsored the bills repealing FLCRA and substituting AWPA. According to Senator Hatch, who introduced the bill in the Senate, "Congress enacted the current law

FLCRA in 1963 to curb the exploitation of migrant agricultural workers *and their employers* by irresponsible farm labor contractors. Known commonly as crew leaders, these contractors typically traveled the country following the planting and harvesting season." 128 Cong Rec. 24,090 (1982). (e.s.) FLCRA was established to curb the abuses by those intermediaries between migrant workers and agricultural employers. *Id.*

On the other hand, AWPA was introduced as "a compromise worked out by farm worker representatives and employer representatives." 128 Cong. Rec. 24,204 (1982) (statement of Senator Quayle). In the House, the bill was introduced as legislation which "provides a viable solution to the problems of the past, and effectively protects the rights and interests of agricultural employers and farm workers." 128 Cong. Rec. 26,010 (1982) (statement of Congressman Panetta). Significantly, the House Report on AWPA prominently refers to the Act as a "consensus bill," stating that the Act was drafted only after extensive negotiations between representatives of all groups affected by this Act and that it attempted to balance fairness to the migrant workers with fairness to their employers. *House Report*, Appendix H, pp. 38a-39a. The Act itself sets out its purpose at 29 U.S.C. §1801, Appendix E, p. 31a, namely, "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, *and* agricultural employers." (e.s.)

This Court has deemed, however, that a state law will not be preempted by a federal law unless "the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained." *Florida Lime and Avocado Growers, Inc., v. Paul*, 373 U.S. 132, 142,

83 S.Ct. 1210, 1217 (1963). *See also DeCanas v. Bica*, 424 U.S. 351, 96 S.Ct. 933 (1976) (recognizing state police power to govern employment relationships which should not be preempted without clear intent of Congress and citing to FLCRA's [now AWPA's] language that it was "intended to supplement state action"). *See* 29 U.S.C. §1871, Appendix E, p. 35a.

In sum, the Eleventh Circuit's opinion ignores the goals and purposes of AWPA. Instead, it focuses on the legislative history of FLCRA which was enacted for different reasons, was repleate with problems for both farmers and workers, and was repealed. AWPA was drafted to correct FLCRA's deficiencies. The purposes of AWPA were compromise and consensus. At the same time, workers compensation was incorporated into AWPA as it had not been in FLCRA. Congress was fully aware of the exclusivity of workers compensation when it passed AWPA.

B. The Department of Labor Regulation

To reach its decision, the Eleventh Circuit rejected, as invalid, a Department of Labor regulation which provides for workers compensation exclusivity in cases of bodily injury or death when a worker is provided with workers compensation coverage under the Act. 29 C.F.R. §500.122(b), Appendix F, p. 36a. The court concluded that the Department of Labor regulation did not conform with Congressional intent. This Eleventh Circuit interpretation disrupts the harmony between the application of AWPA and the traditional benefits of workers compensation. It is now conceivable that every on-the-job injury by a

migrant or seasonal worker will be subject to litigation in tandem with the receipt of workers compensation benefits. This is a rather curious result, as no other group of workers has this privilege.

It is difficult to understand the Eleventh Circuit's conclusion in light of the legislative history of AWPA. The House Report setting out the legislative history of the Act specifically states that the United States Department of Labor representatives were participants in the negotiations which resulted in this consensus bill. *House Report*, Appendix H, pp. 38a-39a. Congress also recognized the Department of Labor as a key player in drafting AWPA: "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups . . . " 128 Cong. Rec. 24,090 (1982) (statement of Senator Hatch). In the House, Congressman Erlanborn recognized the Department of Labor, particularly Assistant Deputy Undersecretary Craig Berrington, the subsequent drafter of the regulation, as "the leader and negotiator in these extensive give-and-take meetings." 128 Cong. Rec. 26,008 (1982). Mr. Erlanborn stated that "All interested parties, agricultural employers, representatives of migrant workers, and the AFL-CIO reached a consensus in support of this bill . . . With this bill, the parties most affected agree that their problems have been solved." *Id.*

The Eleventh Circuit relied on legislative history of repealed FLCRA to invalidate this AWPA regulation. The oft-repeated intent of Congress when AWPA was enacted was to effect a compromise between workers and farmers regarding their employment conditions. The legislative

history of AWPA provides no basis for the Eleventh Circuit's disapproval of the regulation recognizing workers compensation exclusivity. This Court has held that "If a statute is silent or ambiguous with respect to the question at issue, our longstanding practice is to defer to the 'executive department's contruction of a statutory scheme it is intrusted to administer,' unless the legislative history of the enactment shows with sufficient clarity that the agency construction is contrary to the will of Congress." *Japan Whaling Association v. American Cetacean Society*, ___ U.S.___, 106 S.Ct. 2860, 2868 (1986) (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984).) (additional citations omitted). Simply stated, the Eleventh Circuit chose to ignore this controlling and sensible directive.

If the regulation had not comported with the consensus opinion of the parties affected by AWPA, there was certainly an opportunity to voice an objection before the regulations were finalized. In fact, on April 12, 1983, interim regulations of AWPA and a request for comments were published in the Federal Register. 48 Fed. Reg. 15800, No. 71 (April 12, 1983). The publication described AWPA as "the culmination of 18 months of cooperative efforts by the Department of Labor, key members of Congressional committees and their staffs, major agricultural employer organizations, the AFL-CIO and the Migrant Legal Action Program to bring about needed reform in this area." *Id.* Interested persons were given an opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the interim regulations in the Federal Register. *Id.*

Objections to the wording of the regulations and suggestions for their clarification were set out in the Federal Register published on August 12, 1983. 48 Fed. Reg. 36736, No. 157 (August 12, 1983). The only reference to Section 500.122 in it entirety was a paragraph stating that "In response to suggestions from various commentators, many wording changes were made in these sections to make clear the coverage and level of insurance required by the Act." *Id.* Significantly, no changes were made to that portion, later codified as 29 C.F.R. §500.122(b), the regulation setting out workers compensation exclusivity, nor were any objections noted. If the representatives of the farm workers did not believe that the regulation reflected the intent of AWPA, such an objection could certainly have been submitted at that time. Thus, the consensus opinion upon which AWPA was based contemplated state workers compensation exclusivity.

The Eleventh Circuit also erred in concluding that workers compensation exclusivity would deny the workers their private right of action and negate any deterrent effect of the motor vehicle safety provisions. There is nothing to prevent a migrant worker from suing his employer for safety violations in the motor vehicles on the work place. It is only when there has been a case of bodily injury, that workers compensation exclusivity prevents a duplicate recovery. Certainly, if migrant workers believe that a farmer is not providing them with safe vehicles for transport, they can sue to enforce these safety requirements, but they cannot recover twice for the same injury.

Workers compensation premiums are based on the experience rate. If an employer has an unsafe record, his rates will naturally go up. There are numerous provisions built into both workers compensation legislation and AWPA which serve as additional deterrents. Under §440.56 *Florida Statutes*, the State requires insurance companies to conduct safety inspections of vehicles used in the work place. Penalties are assessed against companies who fail to comply with the standard set out by the Division of Workers Compenstion. Under AWPA, an employer can receive criminal sanctions under 29 U.S.C. §1851 for violation of the safety standards. The Secretary of Labor can seek injunctions and civil money penalties up to $1,000 for each violation under 29 U.S.C. §§1852 and 1853. There is certainly sufficient incentive for a farmer to provide his workers with safe vehicles despite workers compensation's exclusivity.

Thus, the conclusion of the Eleventh Circuit both (1) ignores the intent of Congress to replace FLCRA with a true consensus bill designed to balance the rights and protect the interests of all parties affected by the Act and (2) invalidates a regulation specifically designed and approved for that purpose.

CONCLUSION

For these reasons, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX A

**Ramsford BARRETT, et al.,
Plaintiffs-Appellants,**

v.

**ADAMS FRUIT COMPANY, INC.,
Defendant-Appellee.**

No. 88-3121.

United States Court of Appeals,
Eleventh Circuit.

March 15, 1989.

Injured farm workers brought action under the Migrant and Seasonal Agricultural Worker Protection Act for injuries they received while being transported in a van owned by their employer. The United States District Court for the Middle District of Florida, No. 86-1301-CIV-T-17(B), Elizabeth A. Kovachevich, J., found the suit was barred by exclusive remedy provision of Florida's workers' compensation laws. Workers appealed. The Court of Appeals, Vance, Circuit Judge, held that: (1) Migrant and Seasonal Agricultural Worker Protection Act preempted exclusive remedy provisions of workers' compensation law, and (2) receipt of workers' compensation benefits did not bar private suit under the Act for actual or statutory damages.

Reversed and remanded.

Nora Leto, Bartow, Fla., Mivoshi D. Smith, Lipman & Weisberg, Miami, Fla., Florida Rural Legal Services, Inc., West Palm Beach, Fla., for plaintiffs-appellants.

Bonita L. Kneeland, Fowler, White, Gillen, Boggs, Villareal & Banker, Tampa, Fla., for defendant-appellee.

Appeal from the United States District Court for the Middle District of Florida.

Before VANCE and KRAVITCH, Circuit Judges, and HENDERSON, Senior Circuit Judge.

VANCE, Circuit Judge:

This case requires us to determine whether the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L. No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. §§ 1801-1872), ("the Act") preempts the exclusive remedy provision of Florida's workers' compensation laws, Fla.Stat.Ann. § 440.11 (West 1981). For the reasons set forth below we conclude that the private cause of action provision of the Act, 29 U.S.C. § 1854, preempts the Florida statute. Therefore, the receipt of workers' compensation benefits does not bar a private suit under the Act for actual or statutory damages.

I.

On May 8, 1985 plaintiffs, a group of farm workers, were injured in an accident while being transported in a van owned by their employer, Adams Fruit Company, Inc. ("Adams"). Plaintiffs received workers' compensation benefits pursuant to Florida law. They sued Adams under 29 U.S.C. § 1854. In their complaint plaintiffs alleged that the accident occurred and that their injuries were aggravated because Adams violated the Act and its implementing regulations by transporting plaintiffs in an unsafe van loaded beyond its seating capacity, by failing to provide a seat belt for each passenger and by failing to secure water storage containers transported in the van.

Pursuant to section 1854 plaintiffs sought declaratory and injunctive relief and damages "equal to the amount of actual damages they suffered as a result of defendant's violations of the [Act] or statutory damages of $500 per plaintiff per violation of the Act and its implementing regulations, whichever is greater."

Plaintiffs here appeal from the grant of summary judgment in favor of Adams as to its liability for actual or statutory damages due to violations of the Act's transportation safety requirements. The district court concluded that plaintiffs' claims for actual or statutory damages under the Act were barred by Fla.Stat. § 440.11, which provides in part that "[t]he liability of an employer . . . shall be exclusive and in place of all other liability of such employer . . . to the employee . . . and anyone otherwise entitled to recover damages from such employer at law or in admiralty. . . ." The district court relied on a Department of Labor regulation which provides that "[w]here a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. § 500.122(b). The district court was also persuaded by the recent decision of the fourth circuit that the Act was not intended to preempt state workers' compensation laws. *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.1987), *cert. denied*, ___ U.S. ___, 108 S.Ct. 163, 98 L.Ed.2d 117 (1987).

The parties settled their claims for statutory penalties for other violations of the Act. This appeal followed.

II.

There are several ways in which a state statute may be preempted by a federal law and thereby rendered invalid under the Supremacy Clause.

> First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. . . . Second, congressional intent to preempt state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. . . .
>
> As a third alternative, in those areas where Congress has not completely displaced state regulation, federal law may nonetheless preempt state law to the extent it actually conflicts with the federal law. Such a conflict occurs either because "compliance with both federal and state regulation is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217, 10 L.Ed.2d 248 (1963), or because the state law stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). . . .

California Fed. Sav. and Loan Ass'n v. Guerra, 479 U.S. 272, 280-81, 107 S.Ct. 683, 689, 93 L.Ed.2d 613 (1987) (citations omitted). Neither the first nor second basis of preemption is present here. In passing the Act, Congress expressly recognized and left room for state regulation. Section 1871 provides that "[t]his chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation." 29 U.S.C. § 1871.

To determine whether the Florida statute is preempted under the third basis we must ascertain the purposes and objectives of the Act.[1] This involves questions of statutory construction. Thus, the deference with which we would ordinarily treat administrative regulations is not appropriate. *See Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 447-48, 107 S.Ct. 1207, 1221-22, 94 L.Ed.2d 434 (1987) (" 'The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. . . .' ") (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 843 n. 9, 104 S.Ct. 2778, 2782 n. 9, 81 L.Ed.2d 694 (1984)).

A.

We begin by examining the background of the Act. The legislative history is complex, reflecting repeated Congressional attempts to strengthen enforcement and

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[1] We cannot agree with the fourth circuit that section 1871 compels a conclusion of nonpreemption. *See Roman v. Sunny Slope Farms, Inc.*, 817 F.2d at 1118-19 (4th Cir.1987). Reading this section with section 1841(c), which permits workers' compensation coverage to be used to satisfy insurance requirements under the Act, the fourth circuit concluded that "§ 1841 shows that Congress was cognizant of state workers' compensation laws, for [the Act] was in that instance written in view of and to mesh with the state laws, and not to interfere [sic] or supersede them." *Id.* at 1119. We believe that by allowing workers' compensation insurance to be used to satisfy the insurance or liability bond requirement of the Act, Congress did not thereby foreclose all possible methods by which state workers' compensation laws might be preempted. We therefore must consider whether the third basis of preemption is present.

broaden protections to migrant and seasonal farmworkers. The Act's predecessor, the Farm Labor Contractor Registration Act, Pub.L. No. 88-582, 78 Stat. 920 (1963) ("FLCRA") (repealed in 1983 by the Act), was enacted in 1963 in response to problems of farmworker exploitation and abuse. *See* S.Rep. No. 202, 88th Cong., 2d Sess. *reprinted in 1964 U.S.Code Cong. & Admin.News*, 3690, 3692. This act established a system of federal registration for interstate farm labor contractors and required them to keep detailed payroll records for each worker, to disclose truthfully to farmworkers information about the area of employment, crops, wage rates, housing and transportation to be provided, and to obtain insurance covering the transportation of these workers. The Secretary of Labor was responsible for enforcement. *See* Farm Labor Contractor Registration Act, §§ 5, 6, 7, *reprinted in 1964 U.S.Code Cong. & Admin.News*, 1048, 1050-52.

By 1974, testimony before Congress made clear that the FLCRA needed strengthening.[2] As a result, Congress amended the FLCRA to broaden coverage and strengthen enforcement. In order for farm labor contractors to receive a certificate of registration from the Secretary of

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[2] The Senate report accompanying the 1974 amendments to the FLCRA noted that "[i]t has become clear that the provisions of the Act cannot be effectively enforced. Non-compliance by those whose activities the Act were intended to regulate has become the rule rather than the exception. . . . It is quite evident that the Act in its present form provides no real deterrent to violations." *See* S.Rep. No. 93-1295, 93rd Congress, 2d Sess., *reprinted in 1974 U.S.Code Cong. & Admin.News*, 6441, 6443. The lack of a private remedy for aggrieved workers was cited as one of the reasons for the ineffective enforcement of the FLCRA. *Id.*

Labor, they were required to show proof of vehicle insurance and to demonstrate that their vehicles and property complied with federal and state health and safety standards. The 1974 amendments created a federal cause of action for damages by persons aggrieved by violations of the FLCRA or its regulations. The amendments raised the maximum criminal penalties and empowered the Secretary of Labor to seek injunctive relief and impose civil penalties. *See* Farm Labor Contractor Registration Act Amendments of 1974, Pub.L. No. 93-518, *reprinted in 1974 U.S. Code Cong. & Admin.News* 1899, 1903-1905. The amended act was silent as to the extent to which state workers' compensation insurance could be used to satisfy the minimum insurance requirements.

In 1978[3] congressional hearings were held to examine a number of proposed amendments to the FLCRA and to discuss the manner in which the Department of Labor was administering the act. One proposed bill, H.R. 10631, would have amended section 5(a)(2) of the FLCRA to provide:

> If such applicant has filed proof satisfactory to the Secretary [of Labor] of the existence of a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment in connection with his business, activities, or operations as a farm labor contractor, the policy of vehicle liability insurance

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[3] The FLCRA was slightly amended twice in 1976. These amendments are not relevant here. *See* Pub.L. No. 94-259 § 2, 90 Stat. 314 (1976); Pub.L. 94-561 § 6, 90 Stat. 2644 (1976).

provided by him shall conform to the exclusive remedy provisions of the State workmen's compensation law.

H.R. 10631, 95th Congress, 2d Sess., *reprinted in Farm Labor Contractor Registration Act: Hearings on H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922 Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor,* 95th Cong., 2d Sess. 4 (1978) [hereinafter *"Hearings"*]. Representative Ireland, the sponsor of this bill, explained that this provision was to prevent courts from allowing "double dipping" by agricultural workers. *See Hearings* at 34. Representatives from the Department of Labor opposed this amendment,[4] as did farmworker representatives.[5] Congress rejected this amendment.[6]

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[4] We have always taken the position that the employer-employee relationship is not a factor in the application of the Farm Labor Contractor Registration Act. . . . The exclusive remedy provisions of the workers' compensation coverage rely on the employer-employee relationship and are more restrictive than the protection provided in the act. We therefore are of the view that workers' compensation protection required under State law is not a substitute for the vehicle liability insurance protection under the act. *Hearings* at 56-57 (statement of Donald Elisburg, Assistant Secretary of Labor).

[5] *See, e.g., id.* at 140 ("The proposed amendment exposes workers once again to all manner of unsafe transportation and should be rejected.") (statement of Michael R. Masinter, Director of Litigation, Florida Rural Legal Services, Inc.).

[6] The 1978 amendments to the FLCRA relate only to the scope of coverage of this act. *See* Perishable Agricultural Commodities Act, Pub.L. No. 95-562 § 4, 92 Stat. 2381, 2382 *reprinted in 1978 U.S.Code Cong.Admin.News.*

Dissatisfaction with the FLCRA continued. In 1982 Congress repealed this act and passed the Migrant and Seasonal Agricultural Worker Protection Act. The House Report accompanying this bill noted that under the FLCRA employers were treated in a "haphazard, burdensome, and often conflicting manner" and concluded that the FLCRA had "failed to reverse the historical pattern of abuse and exploitation of migrant and seasonal farmworkers and that a completely new approach must be advanced." H.Rep. No. 97-885, 97th Cong., 2d Sess. 1, 2-3, *reprinted in 1982 U.S.Code Cong. & Admin.News* 4547, 4548-49. The new act regulated agricultural employers and associations directly.[7] Congressional action was motivated in part by evidence of continuing abuses in the unsafe transportation of workers.[8] The Act requires

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[7] Representative Ford, a co-sponsor of the Act in the House, emphasized the significance of this change. "For the first time, agricultural employees will, under Federal law, have a right to statutory damages from their employer if he furnishes unsafe housing or transportation. . . . The [Act] corrects the key weakness of the FLCRA, which held only the farm labor contractor responsible for such abuses and shielded the employer unless he fell within the narrow definition of 'farm labor contractor' under that act." 128 Cong.Rec.H. 10456 (daily ed. Dec. 20, 1982).

[8] The House report cited as an example of migrant worker abuse an instance in which forty-seven farmworkers were seriously injured when the flat-bed grain truck in which they were being transported overturned. H.Rep. No. 97-885, *reprinted in 1982 U.S.Code Cong. & Admin.News,* 4547, 4549. Testimony during the 1978 hearings suggested that workers' compensation benefits were available to workers injured in this accident but criticized benefit levels as inadequate. *Hearings* at 132 (testimony of Burton Fretz).

migrant and seasonal labor employers and contractors to comply with two separate protections relating to transportation: to ensure that vehicles used to transport workers are operated by licensed drivers and comply with safety standards promulgated by the Secretary of Labor and to provide insurance coverage for the workers while they are being transported. *See* 29 U.S.C. § 1841(a), (b). Subsection (c) of this section provides that:

> If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.
>
> (2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

Id. § 1841(c). Research revealed no debate surrounding this language.

Central to the Act's enforcement is the provision for a private right of action for violations of the Act. If a court finds that the defendant has intentionally violated the act or regulations, "it may award damages up to and including an amount equal to the amount of actual damages, or

statutory damages of up to $500 per plaintiff per violation. . . ." 29 U.S.C. § 1854. A cosponsor of the Act in the House predicted that this provision would be "the most important deterrent against the continued abuse of migrant and seasonal farmworkers. As budget cuts undermine the Federal Government's ability to enforce the law, farmworkers will depend increasingly on the private bar and legal service organizations to insure that violations are punished and that they are made whole for their losses and sufferings." 128 Cong.Rec.H. 10456 (daily ed. Dec. 20, 1982) (statement of Rep. Ford).[9]

B.

Both the goal of preventing unsafe transportation practices and the role of private suits in enforcing worker

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[9] Courts have widely recognized the deterrent role of damage awards in suits for violations of the Act's predecessor, the FLCRA. For example in *Montelongo v. Meese*, 803 F.2d 1341, 1350 (5th Cir.1986), *cert. denied sub nom. Martin v. Montelongo*, 481 U.S. 1048, 107 S.Ct. 2179, 95 L.Ed. 2d 835 (1987), the fifth circuit rejected an argument that a liquidated damages award for violations of the FLCRA was too high because it exceeded the amount plaintiffs could have earned if their agreement had been honored. The court noted that the civil remedy was designed to promote enforcement of the FLCRA and deter abuses. *See also Rivera v. Adams Packing Ass'n, Inc.*, 707 F.2d 1278, 1282 (11th Cir.1983) ("the creation of a private cause of action . . . indicates that Congress intended to provide additional means of enforcing [the FLCRA]."); *Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir.1985) (civil remedy provision of FLCRA "is not restricted to compensation of individual plaintiffs. It is designed also to promote enforcement of the Act and thereby deter and correct the exploitive practices that have historically plagued the migrant farm labor market.").

protections convince us that applying Fla.Stat. § 440.11 to bar private suits for violations of the Act when transportation is covered by workers' compensation insurance would frustrate congressional intent. Many of the transportation safety protections set forth in the Act and regulations would become effectively unenforceable.[10] Once an employer obtained workers' compensation coverage, he or she would have little incentive to comply with the transportation safety requirements set out in the act and its regulations. *See, e.g., Beliz v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir.1985) ("Plainly, it ought not to be cheaper to violate [the FLCRA] and be sued than to comply with the statutory requirements."). We therefore conclude that the exclusive remedy provision in Fla.Stat. § 440.11 is preempted because it stands as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). *See Michigan Canners & Freezers Ass'n, Inc. v. Agricultural Marketing & Bargaining Bd.*, 467 U.S. 461, 478, 104 S.Ct. 2518, 2527, 81 L.Ed.2d 399 (1984); *Fidelity Federal Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 156, 102 S.Ct. 3014, 3024, 73 L.Ed.2d 664 (1982). *Cf. Rosa v. Cantrell*, 705 F.2d 1208, 1221 (10th Cir.1982), *cert. denied*, 464 U.S. 821, 104 S.Ct. 85, 78 L.Ed.2d 94 (1983) (42 U.S.C. § 1983 preempts exclusive remedy provision of Wyoming's workers' compensation law).

We cannot agree with Adams that section 1841(c) demonstrates that Congress intended for workers' compensation benefits, where available, to be the exclusive

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[10] *See supra* note 2.

remedy for injuries resulting from violations of the transportation safety requirements of the Act. This subsection relates to minimum insurance coverage, only part of the protections covering transported workers in the Act. Congress was well aware of the possibility of "double dipping." *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of such a key ingredient as the private right of action if would have done so directly.

Appellee argues that our conclusion would violate the rule applied in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966) that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 152, 87 S.Ct. at 384 (citing *Johansen v. United States*, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051 (1952)). *Demko* held that a prisoner who had been injured in the performance of his assigned prison tasks and received compensation under 18 U.S.C. § 4126 could not also sue under the Federal Tort Claims Act. "[T]o hold that the 1946 Federal Tort Claims Act was designed to have such a supplemental effect would be to hold that injured prisoners are given greater protection than all other government employees . . . , a congressional purpose not easy to infer." *Demko*, 385 U.S. at 152, 87 S.Ct. at 384. *Demko* involved claims under two federal statutes. In contrast, this case involves claims under a federal and state statute. Moreover, the legislative history and background of the Act provide strong support for the inference that Congress intended to provide heightened protection for migrant and seasonal agricultural workers. Thus, allowing these workers to proceed under the Act

even though they have received workers' compensation benefits does not violate the *Johansen* rule.

Appellee finally argues that it would be contrary to congressional intent and unfair to allow double recovery under workers' compensation laws and a suit for actual or statutory damages under the Act. We note that workers' compensation benefits do not compensate workers for their full actual damages. *See, e.g.*, Fla.Stat. §§ 440.15-.16 (compensation capped at 66⅔% of average wage). The legislative history of the Act, however, indicates that Congress intended for migrant and seasonal farmworkers to recover fully for injuries caused by violations of the Act.[11] Double recovery can be prevented by considering the factors discussed in *Beliz*, 765 F.2d at 1333. There the court noted that "[i]n fixing damages the court may consider. . . .the plaintiffs' recovery on closely related claims joined in the same suit that will in part compensate the damages caused by violations of the Act." A claim for workers' compensation benefits would,

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[11] In discussing the method by which technical violations are counted for the purpose of computing statutory damages, Senator Hatch, who introduced the Senate version of the Act, emphasized that "I want to make absolutely clear, however, that as I have stated earlier, full actual damages would be awarded in every case." 128 Cong.Rec.S. 15565 (daily ed. Dec. 19, 1982) (statement of Sen. Hatch). *See also Beliz*, 765 F.2d at 1332 & n. 68 ("Nor should a worker who sues for violations find recovery inadequate to cover his personal costs in filing suit, testifying, and paying attendant attorney's fees, recovery of which is not allowed by the [FLCRA]") (citing Senate report which notes that farmworkers must overcome a background of fear and intimidation in order to attempt to assert statutory rights).

of course, not be joined in a suit under the Act. Evidence of the amount of workers' compensation benefits received, however, can be considered in calculating the amount of actual damages to be awarded pursuant to section 1854.

We therefore conclude that section 1854 of the Act preempts Florida Stat. § 440.11. The receipt of workers' compensation benefits thus does not bar a private suit for actual or statutory damages based on violations of the Act. The amount of workers' compensation benefits, however, may be considered in awarding actual damages.

Accordingly this case is REVERSED and REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al.,
Plaintiffs,

vs. CASE NO. 86-1301-CIV-T-17

ADAMS FRUIT CO., INC.,
Defendant.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

This cause is before the Court on defendant's motion for summary judgment filed on June 30, 1987, and plaintiffs' response thereto.

Defendant moves for summary judgment on the grounds that the exclusive remedy provisions of the §440.11, *Fla. Stat.*, constitute a complete bar to plaintiffs' claims for damages arising out of the accident which occurred on May 8, 1985. Plaintiffs' position is that the accident occurred because defendant violated the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801 *et seq.* (hereinafter M.S.A.W.P.A.) and its implementing regulations by transporting Plaintiffs in a vehicle that did not comply with the applicable safety provisions of the M.S.A.W.P.A. Plaintiffs further claim that defendant has violated other provisions of the M.S.A.W.P.A in addition to the motor vehicle safety violations, and seek declaratory and injunctive relief as well as damages.

This circuit clearly holds that summary judgment should only be entered when the moving party has sustained its burden of showing the absence of a genuine

issue as to any material fact when all the evidence is viewed in the light most favorable to the nonmoving party. *Sweat v. The Miller Brewing Co.*, 708 F.2d 655 (11th Cir. 1983). All doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Hayden v. First National Bank of Mt. Pleasant*, 595 F.2d 994, 996-7, (5th Cir. 1979), quoting *Gross v. Southern Railroad Co.*, 414 F.2d 292 (5th Cir. 1969). Factual disputes preclude summary judgment.

The Supreme Court of the United States held, in *Celotex Corp. v. Catrett*, 477 U.S. ___, 91 L.Ed. 2d 265, 106 S.Ct. ___, (1986),

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Id. at 273.

The Court also said, "Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing there is a genuine issue for trial.' " *Celotex Corp.*, at p. 274. The Court is satisfied that no genuine issue remains for resolution at trial as to whether M.S.A.W.P.A allows additional recovery over and above Workers' Compensation benefits.

29 U.S.C. §1841 – MOTOR VEHICLE SAFETY

The applicable enforcement provision of the M.S.A.W.P.A., §1854(c)(1) provides that the court may award actual damages or statutory damages if the court

finds that the respondent has intentionally violated any provision or regulation of the statute. The motor vehicle safety provisions, §1841, expressly require that farm labor contractors who use vehicles to transport their workers must ensure that the vehicles conform to safety standards, must ensure that the drivers have a valid and appropriate license, and must maintain an insurance policy for personal or property damage arising from ownership or operation of any such vehicle. §1841(c)(1) provides that no insurance policy shall be required if such workers are transported only under circumstances for which there is coverage under State law. This Court agrees with the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, No. 85-2090, (4th Cir. 1987), in which the Court said "In addition to demonstrating that Congress did not intend to preempt state law, 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with state laws, and not to interfere or supersede them." The *Roman* Court relied on the *Johansen* rule that where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group. *United States v. Demko*, 385 U.S. 149, 152 (1966).

Plaintiffs argue that if they are denied both actual and statutory damages under M.S.A.W.P.A. no penalty whatsoever will have been assessed against the defendant for its violations of the Act. The Act requires that if workers are transported in an unsafe vehicle, the farm labor contractor pays for damages under a required insurance policy or under a state compensation statute. The plaintiffs here have received their actual damages in

the form of workers' compensation benefits. The affidavit of a representative of Wausau Insurance Company establishes that workers' compensation benefits have been provided to the injured workers in this case. This Court finds that liability for Workers' Compensation benefits is an exclusive remedy and that no additional remedy is available under the M.S.A.W.P.A. The Court grants summary judgment to defendant on this issue.

In their complaint, plaintiffs allege numerous additional violations of the M.S.A.W.P.A. These include violating the terms of a working agreement, recruiting the workers without providing required disclosures, failing to post a listing of the rights and protections afforded under the M.S.A.W.P.A. and failing to provide the workers with itemized written statements for each pay period. These violations remain to be resolved. Accordingly, it is

ORDERED that defendant's motion for partial summary judgment as to liability for actual or statutory damages under the motor vehicle safety provisions of the M.S.A.W.P.A. is **granted.**

DONE AND ORDERED in Chambers in Tampa, Florida on October 29, 1987.

/s/ Elizabeth A. Kovachevich
ELIZABETH A. KOVACHEVICH
United States District Court

Copies to:
All parties and counsel of record

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 88-3121

D.C. Docket No. 86-1301

RAMSFORD BARRETT, et al.,

Plaintiffs-Appellants,

versus

ADAMS FRUIT COMPANY, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

---

Before VANCE and KRAVITCH, Circuit Judges, and HENDERSON, Senior Circuit Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby REVERSED; and that this cause be and the same is hereby REMANDED to said District Court for further proceedings in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that defendant-appellee pay to plaintiffs-appellants, the costs on appeal to be taxed by the Clerk of this Court.

Entered: March 15, 1989
For the Court: Miguel J. Cortez, Clerk

By: Karleen McNobb
Deputy Clerk

ISSUED AS MANDATE:

APPENDIX D

Domingo ROMAN, Appellant,

v.

SUNNY SLOPE FARMS, INC., Appellee.

No. 85-2090.

United States Court of Appeals, Fourth Circuit.

Argued June 3, 1986.

Decided May 7, 1987.

Migrant farm worker who was injured on job brought action under the Migrant and Seasonal Agricultural Worker Protection Act, and state common-law claims for battery and fraud. The United States District Court for the District of South Carolina, William W. Wilkins, Jr., J., held that state workers' compensation insurance program provided exclusive remedy to worker, precluding all other claims arising from this incident, and dismissed action, and worker appealed. The Court of Appeals, Widener, Circuit Judge, held that: (1) migrant agricultural worker, who was covered by state workers' compensation law which provided that it was exclusive remedy, bound worker and thus, he could not recover under federal act, and (2) issue of whether case was dismissed on motion for summary judgment or for failure to state cause of action was not determinative, where both trial court and appellate court gave worker benefit of every fact he claimed.

Affirmed.

Murnaghan, J., filed concurring opinion.

Marvin H. Feingold, Neighborhood Legal Assistance Program, Inc., Charleston, S.C., for appellant.

Stanley T. Case (Edward R. Cole, Butler, Means, Evins & Browne, Spartanburg, S.C., on brief) for appellee.

Before WIDENER, K.K. HALL and MURNAGHAN, Circuit Judges.

WIDENER, Circuit Judge:

The appellant-plaintiff, a migrant farmworker, was injured on the job and brought this action with claims under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. § 1801 *et seq.*, and state common-law for battery and fraud. The plaintiff claims his injuries arose from being sprayed by pesticides while working in the defendant's fields. The district court dismissed the complaint because it found that South Carolina's Workers' Compensation Law, S.C.Code Ann. § 42-1-10 *et seq.* provided the exclusive remedy for all of plaintiff's claims. We affirm.

The plaintiff, Domingo Roman, alleges that while working as a migrant farm worker in the defendant's peach orchards during July and August of 1983, he was repeatedly sprayed with a chemical pesticide dangerous to humans. He also alleges that although his employer knew he was being sprayed, or should have known he might have been sprayed, the employer failed to provide protective clothing as required in their written employment agreement. Roman alleges that he was hospitalized for four days during his employment for an illness caused by these sprayings.

The plaintiff claims that when he complained about the sprayings, his employment was terminated and he was promptly sent back to the employer's recruitment offices in New Jersey. He also alleges that his employer fraudulently concealed the facts surrounding the pesticide sprayings preventing the plaintiff from effectively pursuing his remedies at law.

The defendant, Sunny Slope Farms, Inc., denies that Roman was sprayed with any deleterious substance or exposed to pesticide in any manner which would require protective clothing. Furthermore, the defendant asserts that since it has elected coverage under the South Carolina workers' compensation Law, that Law provides the exclusive remedy against an employer to an employee so injured on the job. *See* S.C.Code Ann. §§ 42-1-540, 42-1-360(5).

The plaintiff's AWPA claim alleges that Roman and the defendant entered a written contract of employment wherein the employer promised to furnish him special clothing required to perform his work, and that plaintiff would at all relevant times be covered by a policy of Workmen's Compensation Insurance. Roman alleges that his employer's failure to furnish him protective clothing constitutes a violation of AWPA, actionable under 29 U.S.C. § 1854, since such failure violates § 1822(c) which requires an employer to conform to any working agreements made with its workers.

The district court held that the state workers' compensation insurance program provided an exclusive remedy to the plaintiff, precluding all other claims arising

from this incident. Furthermore, it dismissed the plaintiff's battery and fraud claims as encompassed within § 42-9-70 of the South Carolina Code, which adds a 10 per cent penalty for an employer's wilful failure to comply with any statutory requirement. S.C. Code Ann. § 42-9-70.

The principal question raised on appeal and the question upon which the whole case turns is whether AWPA supplements the South Carolina Workers' Compensation Law in the sense that AWPA in an appropriate case provides a remedy where no state workers' compensation remedy is available, or whether it, indeed, provides a remedy in addition to state workers' compensation for an on-the-job injury, so that AWPA in an appropriate case provides a remedy whether or not the injury is covered by state workers' compensation.

We conclude that AWPA was not intended to provide an additional remedy for an on-the-job injury in a case in which state workers' compensation is available. We need not, and do not, decide whether or not AWPA provides a remedy in an appropriate case for an on-the-job injury when an employer does not have state workers' compensation insurance.[1]

We initially note that 29 U.S.C. § 1871 expresses Congress' intention to supplement state law: "This chapter is intended to supplement state law, and compliance with this chapter shall not excuse any person from compliance with appropriate state law and regulation." It is

---

[1] AWPA, 29 U.S.C. § 1854(c)(1), provides for an award of damages for "intentionally" violating any provision of the chapter.

doubtless true, as plaintiff argues, that this section permits the States to enact more stringent requirements than AWPA without federal interference or preemption. But that is not to say that where an on-the-job injury is covered by a state workers' compensation law that the federal statute gives an additional remedy for the same injury. Section 1871, however, is a clear direction that Congress did not intend to preempt state workers' compensation laws. The fact that such laws were not intended to be preempted is shown by that part of the statute, 29 U.S.C. § 1841, dealing with motor vehicle safety. The section sets standards for the vehicles involved in the transportation of migrant workers by agricultural employers, and subsection (b)(1)(C) provides (in order to protect the workers) that the employer have a liability insurance policy or bond covering the operation of any vehicle used to transport migrant workers. This provision is then followed by subsection (c) which provides, in subsection (1), that no such insurance policy or bond shall be required of the employer if those workers are transported only under circumstances for which there is coverage under a state workers' compensation law. In addition to demonstrating that Congress did not intend to preempt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

We keep in mind that this employer has elected to be bound and has procured workers' compensation insurance as it contracted with the plaintiff so to do. See S.C. Code Ann. § 42-1-360(5). So, the plaintiff here is covered

by South Carolina workers' compensation insurance. He has in fact filed a state workers' compensation claim.

So far as the cases go, there is a dearth of direct authority on the question at hand. We are persuaded, however, by two cases in arriving at our conclusion. They are *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966), and *Garvin v. Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir.1986).

The *Demko* case involved the claim of a federal prisoner who was injured while performing an assigned prison task. He filed his claim for compensation benefits under 18 U.S.C. § 4126 which, with the regulations promulgated under it, provided that prisoners would be compensated for such injuries, but not to exceed the amount payable under the federal employees' compensation act. The statute authorizing the prisoner's claim contained no provision that the compensation award was exclusive. See the Third Circuit opinion in *Demko*, 350 F.2d 698, 700. The prisoner then filed his claim against the United States under the Federal Tort Claims Act. The Court denied the claim, stating that: "Consequently, we decide this case on the *Johansen* [343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051] principle that, where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." 385 U.S. 152, 87 S.Ct. at 384.

In *Garvin*, a longshoreman was injured on a pier in South Carolina in a location in which he was covered both by the federal Longshoreman and Harbor Workers' Compensation Act, as well as under the South Carolina Workers' Compensation Law. He filed his claim under the

federal statute for compensation, and then sued Alumax, the owner of the machine which injured him, which would have been immune under state law because of the South Carolina Workers' Compensation Act, but not under the federal statute which extended immunity only to the subcontractor for whom Garvin worked, not to the owner. We held that Garvin's suit was barred because of the immunity granted by the South Carolina Workers' Compensation Law. While the decision in *Garvin* was based in part on the fact that Garvin's suit against Alumax was based on a state common law cause of action, see pp. 917-18, we also reasoned, in harmonizing the state and federal statutes, that: "There is nothing in that amendment[2] [to the LHWCA] or its legislative history, however, to indicate a congressional intention to restrict the application of state created immunity of contractors in situations in which the state statute traditionally had been applied." 787 F.2d 916-17.

Applying the reasoning of *Demko* and *Garvin* to the case at hand, we find nothing in the legislative history, which is found at 4 U.S.Code & Adm.News (1982), p. 4547 (House Rep. No. 97-885, no Senate report submitted) or in the language of the statute which indicate that the South Carolina Workers' Compensation Law, which does cover the plaintiff, should not be the exclusive remedy to protect him from an on-the-job-injury. *Demko*, 385 U.S. p.

---

[2] A 1984 amendment to the L.H.W.C.A. provided that the federal statute's immunity did not extend to Alumax. P.L. 98-426.

152, 87 S.Ct. at p. 384.[3] As *Demko* points out, again on page 152, to hold that the AWPA would have the supplemental effect claimed by the plaintiff would give the plaintiff greater protection than other agricultural workers in South Carolina covered by that State's Workers' Compensation Law. By the same token, we find nothing in the AWPA or in its legislative history to indicate a Congressional intention to restrict the application of state created immunity in cases in which a state workers' compensation law covers the injury at hand. *Garvin* pp. 916-917.[4]

When we take the reasoning of *Demko* and *Garvin* into account, considering that the statute itself is in terms not exclusive and that at least one part of it was drafted to coincide with state workers' compensation laws, we are of opinion, and hold, that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision.

---

[3] The Court contrasted *United States v. Muniz*, 374 U.S. 150, 83 S.Ct. 1850, 10 L.Ed.2d 805 (1963), in which a prisoner had been allowed to proceed under the F.T.C.A. for an injury when he "was not protected under the prison compensation laws". 385 U.S. 153, 87 S.Ct. at 385.

[4] We mention, and this is supportive of our opinion, that the plaintiff here contracted with his employer that the employer place him under South Carolina Workers' Compensation Law, which provides that it is the exclusive remedy. S.C. Code Ann. § 42-5-10. Yet, at the same time the plaintiff seeks the benefits of that statute, he seeks to escape from the exclusivity provisions of the same law under which he claims.

The judgment of the district court is accordingly

AFFIRMED.[5]

MURNAGHAN, Circuit Judge, concurring:

In concurring with the majority opinion, I do not mean to cast doubt on the result reached. However, the substantial reliance placed by the majority on *Garvin v. Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir.1986), requires a response by me. I dissented in *Garvin* on the grounds that the court lacked jurisdiction to consider and reach a decision on the points dealt with in *Garvin*. I still retain that view though of course *Garvin* is the law of the circuit. However, in the present case reliance of *Garvin* was not necessary to the decision and I would prefer not to rely on it in reaching the conclusion come to by the majority.

Otherwise, I have no difference with the majority opinion and therefore concur.

---

[5] The plaintiff on appeal takes issue with the district court's statement that it considered the case as on a motion for summary judgment, but in its order dismissed for failure to state a cause of action under Rule 12(b)(6). He also takes issue with the grant of summary judgment. While in some cases such a point might be determinative, we have in our decision given the plaintiff the benefit of every fact he claims as did the district court. So, whether the case be decided upon a motion to dismiss or upon a motion for summary judgment is of no moment.

APPENDIX E

§ 1801. Congressional statement of purpose

It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.

(Pub.L. 97-470, § 2, Jan. 14, 1983, 96 Stat. 2584.)

§ 1841. Motor vehicle safety

(a) Mode of transportation subject to coverage

(1) Except as provided in paragraph (2), this section applies to the transportation of any migrant or seasonal agricultural worker.

(2) This section does not apply to the transportation of any migrant or seasonal agricultural worker on a tractor, combine, harvester, picker, or other similar machinery and equipment while such worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or the care of livestock or poultry.

(b) applicability of standards, licensing, and insurance requirements; promulgation of regulations for standards; criteria, etc., for regulations; amount of insurance required

(1) When using, or causing to be used, any vehicle for providing transportation to which this section applies, each agricultural employer, agricultural association, and farm labor contractor shall –

(A) ensure that such vehicle conforms to the standards prescribed by the Secretary under paragraph (2) of this subsection and other applicable Federal and State safety standards,

(B) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle, and

(C) have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damage to persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker.

(2)(A) For purposes of paragraph (1)(A), the Secretary shall prescribe such regulations as may be necessary to protect the health and safety of migrant and seasonal agricultural workers.

• • •

(c) Adjustments of insurance requirements in event of workers compensation coverage

If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of

subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

(2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

(d) Time for promulgation of regulations for standards implementing requirements; revision of standards

The Secretary shall, by regulations promulgated in accordance with section 1861 of this title not later than the effective date of this chapter, prescribe the standards required for the purposes of implementing this section. Any subsequent revision of such standards shall also be accomplished by regulation promulgated in accordance with such section.

(Pub.L. 97-470, Title IV, § 401, Jan. 14, 1983, 96 Stat. 2594.)

§ 1854. Private right of action

(a) Maintenance of civil action in district court by aggrieved person

Any person aggrieved by a violation of this chapter or any regulation under this chapter by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties and without

regard to exhaustion of any alternative administrative remedies provided herein.

(b) Appointment of attorney and commencement of action

Upon application by a complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

(c) Award of damages or other equitable relief; amount; criteria; appeal

(1) If the court finds that the respondent has intentionally violated any provision of this chapter or any regulation under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this chapter or of regulations under this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to $500 per plaintiff per violation, or up to $500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(3) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of Title 28.

(Pub. L. 97-470, Title V, § 504, Jan. 14, 1983, 96 Stat. 2597.)

§ 1871. State laws and regulations

This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation.

(Pub.L. 97-470, Title V, § 521, Jan. 14, 1983, 96 Stat. 2599.)

APPENDIX F

§ 500.122 Adjustments in insurance requirements when workers' compensation coverage is provided under State law.

* * *

(b) Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

APPENDIX G

440.11 Exclusiveness of liability. –

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death.

* * *

APPENDIX H

MIGRANT WORKER PROTECTION ACT
P.L. 97-470

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

P.L. 97-470, see page 96 Stat. 2583

House Report (Education and Labor Committee) No. 97-885,
Sept. 28, 1982 [To accompany H.R. 7102]

Cong. Record Vol. 128 (1982)

DATES OF CONSIDERATION AND PASSAGE

House September 29, December 20, 1982

Senate December 19, 1982

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 97-885

[page 1]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7102) to provide for the protection of migrant and seasonal agricultrual workers and for the registration of contractors of migrant and seasonal agricultural labor and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Background and History of Legislation

H.R. 7102 is a consensus bill – a result reached only after extensive negotiation between representatives of the agricultural community, organized labor, migrant groups,

the United States Department of Labor, and the committees of jurisdiction in both the U.S. House of Representatives and the United States Senate. Its development began as dissatisfaction manifested with the Farm Labor Contractor Registration Act of 1963, as amended. The failure of current law to achieve its goal of fairness and equity for migrant workers combined with employer objections as to their treatment under the Act which, at best was haphazard, burdensome and often conflicting, gave the negotiations that momentum and made the attainment of legislative change obligatory.

• • •

The Act provides that the vehicles used to transport migrant or seasonal agricultural workers be covered by insurance or liability bond which insures the agricultural employer, agricultural association or farm labor contractor against liability for damage to persons or property arising from the ownership, operation or causing to be operated of such vehicles. The level of the insurance shall be at least the amount currently required for common carriers under part II of the ICA and the regulations prescribed thereunder. The Act further provides that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained.

• • •

Inflationary Impact

Since the bill adds no new protections and, in fact, streamlines procedures from that of current law, the Committee anticipates no inflationary impact on the national

economy in the first year of operation nor in the successive years.

* * *

If the farm labor contractor, agricultural employer or association is the employer of any migrant or seasonal worker for the purposes of State workers' compensation law and thus provides coverage for the workers in the case of bodily injury or death, the section would excuse the requirement of an insurance policy or liability bond if the workers are only transported under circumstances where there is coverage under State law. An insurance policy or liability bond will be required for those circumstances where there is no coverage under State law.

* * *

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

REFUGIA FLETES, Plaintiff, v. JOHN I. HAAS, INC., doing business as SUNNYBROOK FARMS, Defendant.	)	Civil No. 89-85-FR OPINION (Filed June 2, 1989)

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Attorneys for Plaintiff

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Attorneys for Defendant

FRYE, Judge:

In the matter before the court, defendant, John E. Haas, Inc., doing business as Sunnybrook Farms (Haas), moves the court for summary judgment in his favor on the grounds that no genuine issues of material fact exist and that he is entitled to judgment as a matter of law (#10). In the alternative, Haas moves the court for a stay of this proceedings pending the final resolution of plaintiff, Refugia Fletes', claim before the Oregon Workers' Compensation Board and the Oregon Court of Appeals (#10).

The issue before the court is whether Fletes may maintain this action under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) when she has a remedy against her employer under the Oregon Workers' Compensation Act.

UNDISPUTED FACTS

Haas, an agricultural employer, employed Fletes in April, 1987 to perform a variety of tasks in agriculture on property Haas leases near Grants Pass, Josephine County, Oregon. On April 15, 1987, Fletes was struck by a loose wooden sideboard while she was riding to work in the back of a truck owned by Haas. She suffered injuries to her back as a result of the accident.

On May 11, 1987, Fletes filed a claim for workers' compensation benefits which Haas contested on the grounds that Fletes had not been injured at work. On September 24, 1987, a hearing was held before a referee on Fletes' claim for workers' compensation. The referee

found that although Fletes' description of the accident was plausible, she had failed to prove by a preponderance of the evidence that she had suffered a personal injury on the job. Benefits were denied. In October, 1987, Fletes appealed the decision of the referee to the Oregon Workers' Compensation Board. The appeal is pending.

On April 6, 1989, Fletes filed an amended complaint in this court alleging that the truck in which she was riding when she was injured was not in compliance with the motor vehicle safety standards promulgated by the United States Department of Labor pursuant to the authority granted that agency by the AWPA.

ANALYSIS

The issue before the court is whether the Oregon Workers' Compensation Act provides the exclusive remedy for agricultural employees in the State of Oregon who claim to have been injured on the job as a result of a violation of the AWPA. 29 U.S.C. § 1871 provides that "[t]his chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation."

There is a split of authority as to the proper interpretation of 29 U.S.C. § 1871. Haas contends that the remedy pursued by Fletes through the workers' compensation system is exclusive and that this action should be barred. He relies upon *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, ___ U.S. ___, 108 S. Ct. 163 (1987), in which the court concluded that "when a migrant agricultural worker is injured on the job and his

injury is covered by a state workers' compensation law, as here, if that state's workers' compensation law provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision." 817 F.2d at 1120.

In opposition to the motion for summary judgment, Fletes relies upon *Barrett v. Adams Fruit Co.*, 867 F.2d 1305 (11th Cir. 1989), in which the court explained:

> Both the goal of preventing unsafe transportation practices and the role of private suits in enforcing worker protections convince us that applying Fla.Stat. § 440.11 to bar private suits for violations of the Act when transportation is covered by workers' compensation insurance would frustrate congressional intent. Many of the transportation safety protections set forth in the Act and regulations would become effectively unenforceable. Once an employer obtained workers' compensation coverage, he or she would have little incentive to comply with the transportation safety requirements set out in the Act and its regulations. We therefore conclude that the exclusive remedy provision in Fla.Stat. § 440.11 is preempted because it stands as "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

We cannot agree with Adams that section 1841(c) demonstrates that Congress intended for workers' compensation benefits, where available, to be the exclusive remedy for injuries resulting from violations of the transportation safety requirements of the Act. This subsection relates to minimum insurance coverage, only part of the protections covering transported workers in the Act. Congress was well aware of the possibility of "double dipping." *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of such a key

> ingredient as the private right of action it would have done so directly.

867 F.2d at 1309-10 (citations omitted).

Fletes brings this action alleging that the truck in which she was riding when she was injured was not in compliance with the motor vehicle safety standards promulgated by the United States Department of Labor pursuant to the authority granted that agency by the AWPA. Haas' compliance with the transportation safety requirements set out in the AWPA and the regulations promulgated pursuant to the AWPA was not an issue in the workers' compensation context.

This court is persuaded by the *Barrett* court's observation that many of the transportation safety requirements set forth in the AWPA and the regulations based on the AWPA will become effectively unenforceable if this court rules that the existence of a remedy under workers' compensation insurance bars an action under the AWPA for alleged noncompliance with the transportation safety requirements of AWPA.

The possibility of a double recovery may be considered in awarding actual damages. However, the court concludes that Haas' motion for summary judgment should be denied.

Haas moves the court for a stay of this case pending the final resolution of Fletes' claims before the Oregon Workers' Compensation Board so that the principles of collateral estoppel may be applied. While the court has the discretion to stay a case pending similar action in a state forum, the balance is heavily weighed in favor of the exercise of jurisdiction. *Moses H. Cone Memorial Hosp.*

v. *Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). In this case, federal law and not state law is at issue. The state proceedings have been pending since October, 1987. While the resolution of the workers' compensation case may affect the amount of damages claimed here, there is no compelling reason for this court to stay this action now.

Haas' motion for summary judgment and, in the alternative, for a stay (#10) is denied.

DATED this 2 day of June, 1989.

/s/ Helen J. Frye
Helen J. Frye
United States District
Judge

Supreme Court, U.S.
FILED
NOV 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

vs.

RAMSFORD BARRETT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

BONITA L. KNEELAND*
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Petition For Certiorari Filed June 13, 1989
Certiorari Granted October 2, 1989

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al.,

Plaintiffs,

v. Case No.: 86-1301-CIV-T-17(B)

ADAMS FRUIT COMPANY, INC.,

Defendant.

RELEVANT DOCKET ENTRIES

DATE	*NR*	*ENTRY*
9/12/86	1	COMPLAINT – Other labor litigation.
11/6/86	6	NOTICE of Filing Affidavit in Support of Worker's Compensation Immunity with attachments by Defendant.
11/18/86	13	ANSWER and Defenses by Defendant.
6/30/87	24	MOTION for Summary Judgment by Defendant.
10/29/87	37	ORDERED that Defendant's Motion for Partial Summary Judgment as to liability for actual or statutory damages under the motor vehicle provisions of the M.S.A.W.P.A. is granted.
1/14/88	47	JOINT STIPULATION for Dismissal by both parties and ORDER of Dismissal with prejudice incorporated therein. GRANTED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, DAVID SAPP
EDWARD TYRELL, DARYL HAMILTON
GARFIELD HILL, JR., ANTHONY GILL,
LYNVAL ALDRIDGE, SEMORE HAYLES,
AUDLEY KIRLEW, and WINSTON WARNER,

Plaintiffs,

v. Case No.: 86-1301-Civ-T-17

ADAMS FRUIT COMPANY, INC.,
a Florida Corporation,

Defendant.
_____/

COMPLAINT

I. *PRELIMINARY STATEMENT*

1. The Plaintiffs are migrant and seasonal farmworkers who harvested oranges in central Florida in early 1985 for the Defendant corporation. On the morning of May 8, 1985, the Plaintiffs were being transported to work in a van owned by the defendant when the left rear tire of the van blew out. The blow out caused the driver to lose control of the van, which in turn caused the vehicle to leave the highway, overturn, and wreck. Many of the Plaintiffs are permanently injured as a result of the accident. Most are no longer able to work. The accident occurred because the Defendant failed to ensure that the van conformed to applicable safety standards under the Migrant and Seasonal Agricultural Worker Protection Act, and its implementing regulations. Plaintiffs' injuries were caused, in part, by the fact that the van, which has a twelve-person capacity, was overloaded and carrying

nineteen persons at the time of the accident. Moreover, there were no seat belts installed in the van which would have protected Plaintiffs when the vehicle overturned and crashed.

The Defendant's failure to ensure that the vehicle in which the Plaintiffs were transported was safe and that Plaintiffs were transported in a safe manner violates the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801, *et seq.* (hereinafter "M.S.A.W.P.A.") and the regulations promulgated thereunder. In addition to the motor vehicle safety provisions, the Defendant violated numerous other provisions of the M.S.A.W.P.A., for all of which the Plaintiffs seek declaratory and injunctive relief and damages.

II. *JURISDICTION*

2. Jurisdiction is conferred upon this court by 28 U.S.C. §1337, which grants jurisdiction over actions arising under statutes regulating commerce, 28 U.S.C. §1331, which grants federal question jurisdiction, and 29 U.S.C. §1854, which authorizes suits brought under the M.S.A.W.P.A. The court is authorized by 28 U.S.C. §2201 and 28 U.S.C. §2202 to award Plaintiffs the declaratory and injunctive relief they seek.

III. *PARTIES*

3. Plaintiffs Ramsford Barrett and Semore Hayles were, at all times pertinent to this action, migrant farmworkers and residents of Winter Haven, Polk County, Florida.

4. Plaintiffs David Sapp, Edward Tyrell, Garfield Hill, Jr., Audley Kirlew, Daryl Hamilton, Winston Warner, Anthony Gill and Lynval Aldridge were, at all times pertinent to this action, seasonal farmworkers and residents of Winter Haven, Polk County, Florida.

5. The Defendant, Adams Fruit Company, Inc. is an "agricultural employer", as that term is defined in 29 U.S.C. §1802(2) of the M.S.A.W.P.A., and a Florida corporation engaged in the production of goods for commerce. The Defendant's principal place of business is in Winter Haven, Florida.

IV. *FACTS*

6. The Plaintiffs are all migrant or seasonal farmworkers who have performed agricultural labor for the Defendant corporation at various times over the past ten years. Some of the Plaintiffs have worked for the Defendant on and off for several years. Others were first employed by the Defendant in early 1985. In April and May of 1985 the Plaintiffs were harvesting oranges for the Defendant corporation in and around central Florida.

7. At no time when the Plaintiffs were recruited for employment by the Defendant did the Defendant provide Plaintiffs with any written disclosures of the terms and conditions of employment.

8. At no time while the Plaintiffs were employed by the Defendant did the Defendant provide Plaintiffs with itemized written statements with their pay containing all the information that is required by law to be contained on those statements.

9. At no time while the Plaintiffs were employed by the Defendant did the Defendant post in a conspicuous place, a poster setting forth the workers' rights under the M.S.A.W.P.A.

10. As part of the Defendant's working arrangement with Plaintiffs during the winter and spring of 1985, the Defendant agreed to provide Plaintiffs with transportation from Winter Haven, Florida, to the worksite each day and back to Winter Haven from the worksite at the end of each day. Implicit in the Defendant's working arrangement with Plaintiffs was that the transportation provided would be safe, that the vehicles in which Plaintiffs were transported would conform to the applicable safety regulations, and that Plaintiffs would be transported in a safe manner.

11. On May 8, 1985, at approximately 7:00 a.m. a 1978 Dodge van owned by the Defendant and operated by one of its employees was transporting Plaintiffs and nine other workers from Winter Haven to Arcadia, Florida, where the workers were to harvest citrus for the Defendant.

12. Upon information and belief one or more of the tires on the van was defective and lacked adequate capacity to support the vehicle's weight.

13. The total number of persons in the van exceeded its seating capacity.

14. A seat was not provided for each passenger in the van.

15. The van was overloaded or the load was improperly distributed to the point that the van was prevented from being operated safely.

16. The van was carrying two large water storage containers which had been placed behind the rear seat of the van, between the seat and the rear door.

17. While the van was travelling south on U.S. Highway 17, its left rear tire blew out, causing the driver to lose control of the vehicle, and the vehicle to overturn and wreck.

18. The seats in the van were not equipped with seat belts. As a result, one or more of the occupants of the van were thrown from the van during the accident. Others were bounced around inside the vehicle.

19. During the accident one or both of the water storage containers hit the rear door and forced it open. As a result, Plaintiff Audley Kirlew was thrown from the van, through the rear door, into a ditch.

20. As a result of the accident, Plaintiffs have suffered temporary and permanent physical injuries, pain and suffering, loss of wages, loss of earning capacity, and have incurred expenses for medical attention and treatment and hospitalization.

21. Defendant, at all times relevant to this action, acted intentionally.

V. *CLAIM*

21. This claim arises under the M.S.A.W.P.A., 29 U.S.C. §1801, *et seq.*, and the regulations promulgated thereunder, found at 29 C.F.R. §500, *et seq.*

22. The Defendant, Adams Fruit Company, Inc., intentionally violated the M.S.A.W.P.A. and its implementing regulations in the following ways:

a. by violating without justification the terms of a working arrangement made with migrant or seasonal farmworkers. 29 U.S.C. §1822(c) and 29 U.S.C. §1832(c)

b. by transporting Plaintiffs or causing Plaintiffs to be transported in a motor vehicle that contained a total number of passengers in excess of the vehicle's seating capacity. 29 U.S.C. §1841(b)(1)(A). 29 C.F.R. §500.105(b)(2)(vii)(E)

c. by transporting Plaintiffs or causing Plaintiffs to be transported in a motor vehicle with one or more tires which were defective and inadequate to support the vehicle's gross weight. 29 U.S.C. §1841(b)(1)(A). 29 C.F.R. §500.105(b)(3)(v)

d. by transporting Plaintiffs or causing Plaintiffs to be transported in a motor vehicle in which a seat was not provided for each passenger. 29 U.S.C. §1841(b)(1)(A). 29 C.F.R. §500.105 (b)(3)(vi)(D)

e. by transporting Plaintiffs or causing Plaintiffs to be transported in a motor vehicle which was overloaded and in which the load was so improperly distributed as to prevent the vehicle's safe operation. 29 U.S.C. §1841(b)(1)(A); 29 C.F.R. §500.105(b)(2)(vii)(A)

f. by transporting Plaintiffs or causing Plaintiffs to be transported in a motor vehicle which

carried property that was stowed in an unsafe manner. 29 U.S.C. §1841(b)(1)(A); 29 C.F.R. §500.105 (b)(2)(vii)(D)

g. by recruiting Plaintiffs Ramsford Barrett and Semore Hayles without providing them with written disclosures of the following information:

1. the place of employment
2. the wage rates to be paid
3. the crops and activities on which they were to be employed
4. the period of employment
5. the transportation, housing, and other employee benefits to be provided, if any, and the costs to be charged for each.

28 U.S.C. §1821(a).

h. by failing to post in a conspicuous place at the place of employment, a poster setting forth the rights and protections afforded migrant and seasonal farmworkers under the M.S.A.W.P.A. 28 U.S.C. §1821(b) and 28 U.S.C. §1831(b)

i. by failing to provide the Plaintiffs with itemized written statements for each pay period, containing the following information:

1. the basis upon which the wages are paid
2. the number of piecework units earned
3. the number of hours worked
4. the total pay period earnings
5. the specific sums withheld and the purpose of the deductions
6. the net pay.

29 U.S.C. §1821(d)(2) and 29 U.S.C. §1831(c)(2).

23. As a result of the aforementioned violations Plaintiffs have suffered damages.

VI. *PRAYER FOR RELIEF*

WHEREFORE, Plaintiffs respectfully request that this court:

a. assume jurisdiction of the case.

b. enter a declaratory judgment in Plaintiffs' favor that the Defendant has intentionally violated the M.S.A.W.P.A., as alleged.

c. enter an injunction enjoining the Defendant from violating the M.S.A.W.P.A. in the future, specifically the transportation safety provisions of the M.S.A.W.P.A. and its implementing regulations and ordering Defendants to comply in the future with all the provisions of the M.S.A.W.P.A..

d. award Plaintiffs damages equal to the amount of actual damages they suffered as a result of Defendant's violations of the M.S.A.W.P.A. or statutory damages of $500 per Plaintiff per violation of the Act and its implementing regulations, whichever is greater.

e. award Plaintiffs the costs of this action

f. award Plaintiffs such other relief as the court deems just and proper.

RESPECTFULLY SUBMITTED this 12th day of September, 1986.

FLORIDA RURAL LEGAL
SERVICES, INC.
305 North Jackson Avenue
P. O. Drawer 1499
Bartow, Florida 33830
Telephone: (813) 534-1781
By: /s/ Tillie Lacayo
TILLIE LACAYO

TL:av

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al., CASE NO.86-1301-Civ-T-17(B)

Plaintiffs,

vs.

ADAMS FRUIT COMPANY, INC., etc.,

Defendant

NOTICE OF FILING AFFIDAVIT IN SUPPORT OF WORKER'S COMPENSATION IMMUNITY

COMES NOW the Defendant, ADAMS FRUIT COMPANY, INC., by and through its undersigned attorneys, and files the attached Affidavit of Earl M. Jefts along with copies of computer printout sheets showing worker's compensation benefits previously provided to the plaintiffs in this cause.

FOWLER,WHITE,GILLEN,BOGGS,VILLAREAL,
& BANKER P.A.
Post Office Box 1438
Tampa, Florida 33601
Attorneys for defendant
(813)228-7411

By: _____
ROBERT E. BANKER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been furnished by mail this 6th day of November, 1986 to:

TILLIE LACAYO, ESQUIRE
Post Office Drawer 1499
Bartow, Florida 33830

Attorney for plaintiffs

Attorney

COMES NOW, EARLE M. JEFTS, and after first being duly sworn, deposes and says:

1. My name is Earle M. Jefts, and I am the workers compensation claim unit manager for Wausau Insurance Companies in the Orlando, Florida claim office.

2. That on May 8, 1985 Wausau Underwriters Insurance Company provided workers compensation coverage for Adams Fruit Company, Inc.

3. Attached hereto are computer printout sheets showing benefits that were paid to the plaintiffs in this case, by Wausau Insurance Companies, pursuant to the workers compensation coverage.

Signed /s/ Earle M. Jefts
Earle M. Jefts

Sworn to and Subscribed before me this 31 day of October, 1986

/s/ Carol I. Boyd
Notary Public

Seal

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES MAY 20, 1987
BONDED THRU GENERAL INSURANCE UND.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al.,

Plaintiffs,

vs. CASE NO.: 86-1301-CIV-T-17(B)

ADAMS FRUIT COMPANY, INC., etc.,

Defendant.

ANSWER AND DEFENSES

COMES NOW the Defendant, ADAMS FRUIT COMPANY, INC., by and through its undersigned attorneys, and for its Answer and Defenses to the plaintiffs' Complaint says:

FIRST DEFENSE

For its First Defense and answering the numbered paragraphs of the Complaint, this Defendant says:

I. PRELIMINARY STATEMENT

1. This defendant admits that the plaintiffs were employees and that an accident occurred on May 8, 1985 while they were riding in a van. All other allegations are denied.

II. JURISDICTION

2. Denied.

III. PARTIES

3. Without knowledge and therefore denied.

4. Without knowledge and therefore denied.

5. Admitted that this Defendant's principal place of business is in Winter Haven, Florida. All other allegations are denied.

IV. FACTS

6. Admitted that the plaintiffs were employees at least to the extent that worker's compensation benefits were provided. All other allegations are denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

V. CLAIM

21. Denied.

22. Denied, including each sub-paragraph thereof.

23. Denied.

VI. PRAYER FOR RELIEF

(a) Denied that the Court should assume jurisdiction of this cause.

(b) Denied.

(c) Denied.

(d) Denied.

(e) Denied.

(f) Denied.

SECOND DEFENSE

For its Second Defense this Defendant states that it is not guilty.

THIRD DEFENSE

For its Third Defense this Defendant states that at all times material hereto the plaintiffs' were statutory employees of the defendant and that the defendant has

heretofore both secured and provided all plaintiffs with workers compensation benefits pursuant to the Florida Worker's Compensation Law and that therefore this Defendant is immune from suit.

FOURTH DEFENSE

For its Fourth Defense this Defendant states that the plaintiffs have heretofore elected to avail themselves of worker's compensation benefits provided by this remedy and are barred from any recovery herein.

FIFTH DEFENSE

For its Fifth Defense this Defendant states that at the time and place alleged the plaintiffs were themselves negligent and their negligence either caused or contributed to the happening of the accident and their injuries, and that to the extent that their negligence did so contribute, any recovery by them should be proportionately reduced.

SIXTH DEFENSE

For its Sixth Defense this Defendant states that at the time and place alleged the plaintiffs did assume the risk of their conduct and that to the extent that they did assume such risk, any recovery by them is either barred or should be proportionately reduced.

FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL, & BANKER P.A.
Post Office Box 1438
Tampa, Florida 33601
Attorneys for defendant
(813)228-7411

BY:_____
ROBERT E. BANKER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been furnished by mail this 18th day of November, 1986 to:

TILLIE LACAYO, ESQUIRE
Post Office Drawer 1499
Bartow, Florida 33830
Attorney for Plaintiffs

_____
Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, DAVID SAPP, EDWARD TRYELL, DARYL HAMILTON GARFIELD HILL, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW AND WINSTON WARNER,

Plaintiffs,

vs. Case No.: 86-1301-CIV-T-17(B)

ADAMS FRUIT COMPANY, INC., a Florida corporation,

Defendant.
_____/

MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, Adams Fruit Company, Inc. by and through its undersigned attorneys and moves this Honorable Motion for Summary Judgment upon the grounds that the exclusive remedy provisions of Florida's Workers' Compensation Statute, Section 440.11 constitute a complete bar to the claims for damages filed by the Plaintiffs herein. In the alternative, this Defendant requests that this Court enter an Order granting a Partial Summary Judgment for Defendant upon the grounds that the exclusive remedy provisions of the Florida Workers' Compensation Statute, Section 440.11 constitute a bar to the claim for any monetary damages filed by the Plaintiffs herein.

/s/ Bonita L. Kneeland for
ROBERT E. BANKER, ESQ.
FOWLER, WHITE, GILLEN, BOGGS,VILLAREAL AND BANKER, P.A.
501 E Kennedy Boulevard
Suite 1600
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Nora Leto, Esq., Florida Rural Legal Services, Inc., 305 North Jackson Avenue, Post Office Drawer 1499, Bartow, Florida 33830 this 30th day of June, 1987, by U.S. Mail.

/s/ Bonita L. Kneeland for
ROBERT E. BANKER, ESQ.
FOWLER, WHITE, GILLEN, BOGGS,VILLAREAL AND BANKER, P.A.
501 E Kennedy Boulevard
Suite 1600
Post Office Box 1438
Tampa, Florida 33601
(813) 228-7411
Attorney for Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT, et al.,

Plaintiffs,

vs. CASE NO.: 86-1301-CIV-T-17(B)

ADAMS FRUIT COMPANY, INC.,

Defendant.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

A full reprint of this order is set out in the Adams Fruit Company, Inc. Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit and is located at Appendix B, p. 16a.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RAMSFORD BARRETT,
DAVID SAPP, EDWARD
TRYELL, DARYL
HAMILTON GARFIELD
HILL, JR., ANTHONY
GILL, LYNVAL
ALDRIDGE, SEMORE
HAYLES, AUDLEY
KIRLEW AND
WINSTON WARNER,

Plaintiffs,

vs. Case No.: 86-1301-CIV-T-17(B)

ADAMS FRUIT COMPANY, INC.,
a Florida corporation,

Defendant.
_____/

JOINT STIPULATION FOR DISMISSAL

IT IS HEREBY STIPULATED by and between counsel for the respective parties in the above and foregoing cause that, same having been amicable settled, those causes of action remaining to be tried in this case, be dismissed with prejudice.

Dated this 13th day of Jan[illegible] 1988.

/s/ Nora Leto
Nora Leto, Esquire
Attorney for Plaintiffs
Florida Rural Legal Services
305 North Jackson Avenue
Post Office Drawer 1499
Bartow, Florida 33830
(813) 534-1781

/s/ Bonita L. Kneeland
Bonita L. Kneeland, Esquire
ROBERT E. BANKER, ESQ.
FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL AND BANKER, P.A.
501 E Kennedy Boulevard
Suite 1600
Post Office Box 1438
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(813) 228-7411

ORDER OF DISMISSAL

STIPULATION for dismissal having been entered into by and between counsel for the parties hereto, and it appearing therefrom and to the satisfaction of the Court that the foregoing cause has been amicably settled by the parties thereto, it is therefore

ORDERED AND ADJUDGED that the above and foregoing causes of action which remain to be tried in this case be dismissed with prejudice.

DONE AND ORDERED in Chambers in Hillsborough County, Florida this 14th day of January, 1988.

/s/ Elizabeth A. Kovachevich
United States District Judge
Middle District of Florida

Copies Furnished to:
Bonita L. Kneeland, Esquire
Nora Leto, Esquire

FILED
NOV 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

(6)

No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR THE PETITIONER

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November 1989

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QUESTION PRESENTED

Whether the Migrant and Seasonal Agricultural Workers Protection Act preempts the exclusive remedy of state workers' compensation benefits for bodily injury.

LIST OF PARTIES

The Petitioner is Adams Fruit Company, Inc. The Respondents are Ramsford Barrett, David Sapp, Edward Tyrell, Daryl Hamilton, Garfield Hills, Jr., Anthony Gill, Lynval Aldridge, Semore Hayles, Audley Kirlew and Winston Warner.

The Petitioner is a corporation with no parent companies, subsidiaries, or affiliates.

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No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR THE PETITIONER

OPINION BELOW

The decision of the Court of Appeals for the Eleventh Circuit is reported at 867 F.2d 1305 (11th Cir. 1989) and is set out as Pet. App. A, p. 1a.

The order of the U.S. District Court for the Middle District of Florida, granting summary judgment to Adams Fruit, is set out as Pet. App. B, p. 16a.

JURISDICTION

The judgment of the Court of Appeals was entered on March 15, 1989, and is attached as Pet. App. C, p. 20a. No rehearing was sought. The petition for a writ of certiorari was filed on June 13, 1989 and was granted on October 2, 1989. The jurisdiction of this court is invoked under 28 U.S.C. §1254.

STATUTES AND REGULATIONS INVOLVED

Sections 1801, 1841, 1854 and 1871 of the Migrant and Seasonal Workers Protection Act (AWPA), 29 U.S.C. §1801 et seq., Pet. App. E, p. 31a.

Excerpts from the legislative history of AWPA, H.R. Rep. No. 97-885, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News, p. 4547, (no Senate report submitted) Pet. App. H, p. 38a.

U.S. Department of Labor regulation, 29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

Section 440.11 *Florida Statutes*, Florida Workers' Compensation Act, Pet. App. G, p. 37a.

STATEMENT OF THE CASE

The respondents, plaintiffs below, are a group of ten farm workers employed by Adams Fruit Company, Inc., the petitioner. They were injured in an accident on May 8, 1985 when an allegedly defective tire blew out while the workers were being transported in an Adams Fruit van.

(J.A. 2). The workers sought and received benefits, through Adams Fruit's workers' compensation policy, for their damages. (J.A. 11-12). These damages were in the form of a payment for all medical treatment and for lost wages as afforded by Florida's Workers' Compensation Act, *Fla. Stat.* §440.01 et seq.

On September 12, 1986, the workers filed suit against Adams Fruit, seeking damages for these same injuries under the Migrant and Seasonal Agricultural Workers Protection Act. (J.A. 2-10). Commonly known as AWPA, the statute regulates the activities of farm labor contractors and farm employers. It was enacted in 1982 "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations and agricultural employers." 29 U.S.C. §1801, Pet. App. E, p. 31a. It requires farm employers and labor contractors to disclose relevant information and maintain records, to pay wages promptly and in full, to refrain from requiring workers to buy goods or services solely from them, to abide by the terms of their contracts with workers, to provide safe and sanitary housing, and to provide safe transportation for workers. 29 U.S.C. §§1821, 1822, 1823, 1832, and 1841.

The Act also requires the employer or contractor to obtain a liability bond or liability insurance coverage for injuries to the workers while in transport. However, in cases where "an agricultural employer***is the employer of any migrant or seasonal agricultural worker for purposes of a state workers' compensation coverage for such worker in the case of bodily injury or death***[n]o insurance policy or liability bond shall be required***if such workers are transported only under circumstances for

which there is coverage under such State Law." 29 U.S.C. §1841(c) Pet. App. E, p. 32a-33a.

In their complaint, the workers alleged that, under Section 1854 of the statute, they were entitled to additional actual damages for these injuries, or statutory damages of up to $500.00 per plaintiff per violation, whichever was greater, for alleged violations of the motor vehicle safety provisions of AWPA. (J.A. 9). Specifically, the workers claimed that Adams Fruit violated these provisions by overloading the van, using a van with a defective tire, not providing a seat for each occupant,[1] and stowing water containers in an unsafe manner. (J.A. 7-8). The workers also requested an injunction to prevent future violations of this type. (J.A. 9). In addition, the workers alleged three separate notice and record keeping violations unrelated to the accident. (J.A. 8). Adams Fruit's answer to the complaint denied the Plaintiffs' allegations and alleged that the workers had already received recovery for their damages through their workers' compensation claims. (J.A. 13-17). The answer also alleged that the workers' own negligence contributed to their damage (J.A. 16).

In conjunction with a motion to dismiss, (R. 1:2), Adams Fruit filed an affidavit from its workers' compensation carrier attesting to the fact that workers' compensation benefits had been paid to each Plaintiff. (J.A. 11-12).

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[1] Although the general allegations of the complaint fault Adams Fruit for not providing seat belts for each occupant, the claim for relief does not allege this action as a violation, nor do AWPA's implementing regulations require seat belts. *See* 29 C.F.R. 500.100-105.

The affidavit included computer printouts showing all benefits paid on behalf of each Plaintiff for medical expenses and lost wages as of October 30, 1986, the date of the affidavit. (R. 1:6, 3-55). At that time, benefits awarded to the ten Plaintiffs totalled approximately $122,884.00. (R. 1:6, 3-55). Mr. Sapp's benefits were $16,417.00; Mr. Warner's $773.00; Mr. Hill's $1,469.00; Mr. Kirlew's $2,316.00; Mr. Tyrell's $10,804.00; Mr. Barrett's $17,817.00; Mr. Aldridge's $23,097.00; Mr. Hamilton's $10,437.00; Mr. Hayles' $11,440.00; and Mr. Gill's $13,707.00. (R. 6:3-55).

Subsequently, Adams Fruit filed a motion for either full or partial summary judgment on the workers' claims (J.A. 18-19), citing the exclusive remedy provision of Florida's Workers' Compensation Statute, *Fla. Stat.* §440.11, Pet. App. G, p. 37a. The United States District Court for the Middle District of Florida granted a partial summary judgment to Adams Fruit as to any liability for additional damages for bodily injuries brought pursuant to claims for violations of the motor vehicle safety provisions of AWPA. *Barrett v. Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. 1986), Pet. App. B, p. 16a. The order, however, allowed the allegations of miscellaneous notice and record keeping violations to stand. Subsequently, the workers accepted Adams Fruit's offer of $500.00 per Plaintiff to settle this group of claims and they were dismissed. (R. 2:44-45 and J.A. 21-22).

In reaching its decision, the Middle District of Florida determined that the Plaintiffs had already received their actual damages for bodily injury in the form of workers' compensation benefits as required by the Act and gave effect to the exclusive remedy provisions of that law. The

court relied on the rationale expressed in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. den.* ___ U.S. ___, 108 S.Ct. 163 (1987). Pet. App. D, p. 22a. *Roman* held that Congress was cognizant of state workers' compensation laws when enacting AWPA, that AWPA was intended to mesh with state laws, not interfere with or supersede them, and that nothing in AWPA's language or legislative history indicated otherwise. *Roman* also relied on this Court's decision in *United States v. Demko*, 385 U.S. 149 (1966) holding that where a workers' compensation remedy reasonably and fairly covered a group of workers, it was presumed to be the exclusive remedy.

The farm workers then appealed the partial summary judgment to the Eleventh Circuit Court of Appeals, which reversed the partial summary judgment and remanded the case for trial. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989) Pet. App. A, p. 1a. In rejecting *Roman* the Eleventh Circuit acknowledged that no express preemption of state workers' compensation law was apparent in AWPA's language or AWPA's history. However, the court below determined that preemption was necessary in order to fulfill the dual purpose of this statute of providing full recovery to the workers and providing a deterrent to statutory violations.

In interpreting AWPA, the Eleventh Circuit relied heavily on the legislative history of the Farm Labor Contractor Registration Act of 1963 ("FLCRA") and its several amendments and attempted amendments. FLCRA was repealed by AWPA. The Eleventh Circuit also declined to give effect to the existing Department of Labor Regulation promulgated under AWPA which specifically states: "Where a state workers' compensation

law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

SUMMARY OF THE ARGUMENT

In drafting AWPA, Congress did not intend that an injured worker collect workers' compensation benefits for motor vehicle-related injuries and sue his employer for additional damages for these same injuries. A plain reading of the statute and its legislative history makes three things clear: First, Congress expressly left open a role for workers' compensation benefits as the recovery for bodily injury under the motor vehicle provisions of the Act. Second, Congress knew that all state workers' compensation law included an exclusivity rule when it passed AWPA as a "consensus bill", a compromise between the interests of farm workers and farm employers. Third, the Department of Labor's contemporaneous regulation honoring the exclusivity provision of workers' compensation law should be entitled to considerable deference.

AWPA expressly acknowledges its purpose to "supplement," not supplant, state law. 29 U.S.C. §1871, Pet. App. E, p. 35a. Under its motor vehicle safety provisions, Section 1841 (b) (1) (C), AWPA requires a farm employer to purchase a liability policy or bond for injuries occurring to farm workers while in transport. However, Section 1841(c) exempts this requirement if workers' compensation coverage "under State law" is applicable

for bodily injuries. Congress clarified the purpose behind this provision by assuring the farm employer "that in those situations where agricultural workers are transported and are covered by state workers' compensation no additional insurance for damage to persons need be obtained." H.R. Rep. No. 97-885, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News 4566 at 20 [hereinafter "House Report"], Pet. App. H, pp. 38a-40a. Congress was aware of the various coverage systems and carefully chose its language in 29 U.S.C. §1841(c). Workers' compensation, if it existed, satisfied its concerns.

The Department of Labor was "the leader and negotiator in th[e] extensive give-and-take meetings" that lead to the formation of AWPA. 128 Cong. Rec. 24,090 (1982) (statement of co-sponsor Senator Hatch); 128 Cong. Rec. 26,008 (1982) (statement of Representative Erlenborn). The Department of Labor subsequently promulgated the following regulation: "Where a state workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." 29 C.F.R. §500.122(b), Pet. App. F, p. 36a. This regulation, along with others promulgated under AWPA, were published in the Federal Register along with a solicitation of comments or objections. No one objected to the regulation and it was finalized four months later. The court of appeals gave no deference to the Department of Labor Regulation despite the Department's key involvement in negotiating the provisions of AWPA and despite this Court's deference to the decision of a regulatory

agency when a "choice represents a reasonable accommodation of conflicting policies." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-845 (1984). The court of appeals ignored this Court's sensible and controlling directive.

The court of appeals erred in relying on the legislative history of AWPA's predecessor statute, FLCRA, which did not include provisions for fixed-situs farm employers like Adams Fruit or for workers' compensation, as the legislative intent of AWPA, which did. It strains logic to conclude that AWPA intended to mislead farm employers and expose them to past and present uncovered claims, particularly pain and suffering awards in catastrophic injury cases, which are not included under state workers' compensation benefits. The court of appeals ignored the sufficient, additional deterrents built into the statute when it determined that such a harsh penalty must be exerted against farm employers to insure their compliance with AWPA. The opinion below would turn every workers' compensation claim based on motor-vehicle bodily injuries into a full-blown federal tort trial. The court of appeals' opinion is misguided and disrupts the harmony existing between AWPA and state workers' compensation law.

ARGUMENT

The court of appeals' interpretation of AWPA, creates extraordinary rights for migrant and seasonal farm workers at the expense of agriculatural employers/

farmers. AWPA, which replaced its unworkable predecessor, FLCRA, was a compromise bill drafted for the protection of both farm workers and employers. AWPA expanded statutory protection to cover fixed-situs agricultural employers like Adams Fruit, but it also made it clear that not all of the Act's requirements were appropriate for such employers. Of particular importance for the case, AWPA required fixed-situs employers (as well as contractors) to carry vehicle liability insurance, but it also provided that workers' compensation coverage could substitute for liability insurance for workers injured while in transport.

Many farm employers adhered to Congress' assurance (House Report at 20) that purchasing any coverage beyond workers' compensation was unnecessary. Now, if the court of appeals' opinion is to stand, farmers across the nation who relied on these words are suddenly faced with tremendous potential exposure for non-insured bodily injury claims. This is particularly true for current or past multiple catastrophic injuries for which a court could award substantial pain and suffering or death benefit amounts not provided under workers' compensation law. AWPA expressly provides that its purpose was to protect both workers and employers. AWPA's intent was not to mislead and bankrupt farmers.

The court of appeals viewed this case as one of preemption, but admitted that nothing in the express provisions or legislative history of AWPA indicated an intent to preempt workers' compensation law. Instead, the lower court relied upon the legislative history of FLCRA, which did not cover fixed-situs agricultural

employers and did not expressly deal with workers' compensation, as demonstrating the intent of the Congress that enacted AWPA years later. At the same time, the court of appeals invalidated a Department of Labor regulation promulgated under AWPA. This regulation made clear that workers could not sue an employer over and above workers' compensation benefits for bodily injury damages.

I.

THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT DOES NOT PREEMPT THE EXCLUSIVE REMEDY OF STATE WORKERS' COMPENSATION BENEFITS FOR BODILY INJURY.

A. The Farm Labor Contractor Registration Act (FLCRA).

AWPA's predecessor statute was the Farm Labor Contractor Registration Act of 1963, commonly known as FLCRA. According to Senator Hatch, who co-sponsored AWPA in the Senate, "Congress enacted the current law FLCRA in 1963 to curb the exploitation of migrant agricultural workers and their employers by irresponsible farm labor contractors. Known commonly as crew leaders, these contractors typically traveled the country following the planting and harvesting season." 128 Cong. Rec. 24,090 (1982) (statement of Senator Hatch.) Fixed-situs agricultural employers, like Adams Fruit, were also victimized when crew leaders, lured by more lucrative arrangements, would break previously made contracts to supply labor to a farmer. These farmers faced financial

ruin if they could not get help to harvest their crops in time. *Id.*

Among the many labor contractor abuses was transporting workers long distances to farm work sites in unsafe, uninsured vehicles. *Id. See also* 128 Cong.Rec. 32,464 (Statement of Deputy Undersecretary Collyer); House Report at 1-4. One of the reforms attempted by FLCRA was requiring crew leaders to carry insurance to compensate the workers for any injuries they received during transport. *See* Sen. Rep. No. 202, 88th Cong., 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 3695.

Congress did not intend FLCRA's regulations to encompass the fixed-situs farm employer. As explained on the House floor during the introduction of AWPA, "[s]ince FLCRA's enactment***the Department of Labor has misconstrued the terms of the Act's requirements on farmers and other agricultural employers who were never intended to be covered by the Act." *See* 128 Cong. Rec. at 26,010 (statement of Representative Panetta). Under FLCRA, the Department of Labor sometimes required farm owners who hired migrant workers to register as labor contractors and attempted to enforce FLCRA against these farmers even though FLCRA was clearly not designed to meet their situation. *See* House Report at 2; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn). Meanwhile, FLCRA continued to prove unworkable. *See* House Report at 1-5.

B. The Migrant and Seasonal Agricultural Workers Act (AWPA).

Migrant and Seasonal Agricultural Workers Protection Act (AWPA) was enacted in 1982 as a "consensus bill" only after extensive negotiations among representatives of both parties in Congress, organized labor, migrant farm worker groups, representatives of agricultural employers, and the Department of Labor. "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups to develop new legislation that would strengthen enforcement over labor contractors as well as enhance labor standard protections for migrant and seasonal agricultural workers.***As Secretary Donovan indicated in the letter transmitting the measure, 'the bill represents a consensus among the parties who are most directly affected'." 128 Cong. Rec. 24,090 (1982) (statement of cosponsor Senator Hatch). *See also* House Report at 1. Senate sponsors introduced AWPA as a "compromise worked out by farm worker representatives and employer representatives." 128 Cong. Rec. 24,204 (1982) (statement of cosponsor Senator Quayle). House sponsors introduced AWPA as legislation which "provides a viable solution to the problems of the past, and effectively protects the rights and interests of agricultural employers and farm workers." 128 Cong. Rec. 26,010 (1982) (statement of Representative Panetta). AWPA itself stated that its purpose was "to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." 29 U.S.C. §1801, Pet. App. E, p. 31a.

Unlike FLCRA, AWPA clearly imposed obligations for safe transportation, safe housing, proper notice, and

record keeping on fixed-situs agricultural employers as well as on farm labor contractors or "crew leaders." 128 Cong. Rec. 24,204 (statement of co-sponsor Senator Quayle). But AWPA relieved farmers of the registration obligations, which continued to apply to farm labor contractors. *Id*. Like FLCRA, AWPA required liability insurance for injuries to workers who were transported in motor vehicles but, in recognition of the fact that it covered employers, AWPA included an exemption from the insurance requirement where "such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law." *See* 29 U.S.C. §1841(c), Pet. App. E, p. 32a. The sponsors of the bill assured farmers "that in those situations where agricultural workers are transported and are covered by state workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.

By including seasonal workers[2] under the Act and by covering workers employed directly by farmers, AWPA vastly increased the number of workers who would be covered by AWPA and by state workers' compensation laws. The provisions of AWPA, including the provision relating to workers' compensation, were passed with no objection. On August 12, 1983, the Secretary of Labor promulgated the following final regulation implementing the workers' compensation provision:

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[2] Unlike migrant workers, a seasonal worker is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence. *See* 29 U.S.C. §1802(10).

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

C. The language and structure of AWPA demonstrates that state workers' compensation benefits were intended to be the exclusive remedy for workers injured on the job.

This Court has long adhered to the sensible rule that where the resolution of a question of federal law turns on a statute, this Court will look first to the language of the statute itself. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979). The Court will then look to the legislative history of the statute only if the statutory language is unclear. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

AWPA expressly acknowledges that it is intended to "supplement," not supplant, state law when it states: "This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulations." 29 U.S.C. §1871, Pet. App. E, p. 35a. In *DeCanas v. Bica*, 424 U.S. 351 (1976) migrant farm workers challenged a state's law regulating the employment of aliens. This court found the word "supplement" in the identical provision of FLCRA to be "affirmative evidence*** that Congress sanctioned concurrent state legislation on the subject covered by the challenged state law." *Id*. at 363.

Furthermore, AWPA specifically recognizes that workers' compensation benefits shall be the remedy for damages for bodily injuries to covered workers while being transported. Section 1841(b)(1)(C) of AWPA requires every agricultural employer, agricultural association, and farm labor contractor to "have an insurance policy or a liability bond that is in effect which insures the agricultural employer, the agricultural association, or the farm labor contractor against liability for damaged persons or property arising from the ownership, operation, or the causing to be operated, of any vehicle used to transport any migrant or seasonal agricultural worker." *See* Pet. App. E, p. 31a-32a. Section 1841(c) of AWPA, entitled "Adjustments of insurance requirements in event of workers' compensation coverage," adds the following exception:

> If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> > (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

See Pet. App. E, p. 32a-33a.

In all states where an employer provides coverage through workers' compensation,[3] an award of those benefits becomes the exclusive remedy for employee injuries. *See* 2A A. Larson, *The Law of Workmen's Compensation*, at 12-1. Nothing in the statutory language of AWPA indicates that these state workers' compensation laws would not govern the actual damages recoverable for bodily injury as defined by that law. Instead, the statute was drafted to give effect to state workers' compensation law as a substitute source of recovery for actual damages for bodily injury. Congress was well aware of workers' compensation laws exclusivity provisions. Certainly if Congress intended AWPA to preempt workers' compensation, the text of AWPA could have expressly preempted state law. The statute's silence on this point is significant and creates the assumption that state workers' compensation law, in its entirety, is incorporated into the statute.

Workers' compensation is a respected, time-honored remedy. As described by this Court in *New York Central R. Co. v. White*, 243 U.S. 188 (1917), the cornerstone of the remedy is its compromise: An injured employee obtains quick and certain moderate recovery for his economic loss regardless of an employer's fault or lack thereof. In

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[3] The number of agricultural workers covered under workers' compensation laws is extensive. Thirteen states plus the District of Columbia require such coverage. Twenty-two other states require such coverage but include some narrow limitations. In the remaining fifteen states, the employer may elect to be included. 4 A. Larson, *The Law of Workmen's Compensation*, App. A 4-1 to A 4-5 (1985 report).

return, the employer cannot be sued for additional damages for those injuries.[4] This Court characterized this tradeoff as "a just settlement of a difficult problem, affecting one of the most important of social relations," that of employer-employee. *Id.* at 202.

This Court has more recently honored the exclusive remedy aspect of workers' compensation law in *United States v. Demko*, 385 U.S. 149 (1966). In *Demko* a federal prisoner claimed he was injured during an assigned prison task and filed both a claim for compensation benefits under the Federal Employees Compensation Act and an award under the Federal Torts Claims Act. This Court denied the claim, basing its decision on the principle that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Id.* at 152. (relying on *Johansen v. United States*, 343 U.S. 427 (1952) (holding that the Federal Employees Compensation Act was the exclusive remedy for crew members on public vessels.) The very act of incorporating state workers' compensation law into AWPA for bodily injury raises the presumption that it is the exclusive remedy for the recovery of actual damages for bodily injury and lost wages derivative of that injury.

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[4] The remedy under compensation law is exclusive with the exception of the commission of an intentional tort, *i.e.* an act *certain to harm*. *See e.g. Lawton v. Alpine Engineered Products, Inc.*, 498 So. 2d 879 (Fla. 1986). Under both FLCRA and AWPA, "intentional" allegations refer, instead, to the conscious or deliberate violation of statutory provisions despite lack of knowledge of the law. *See Salazar-Calderon v. Presidio Valley Farmers Ass'n.*, 765 F.2d 1334 (5th Cir. 1985).

Where the relationship between the parties places the employer and employee squarely within workers' compensation coverage, AWPA expressly contemplates workers' compensation as the remedy for claims involving bodily injury by providing for this contingency through workers' compensation insurance. The worker need not file suit against his employer and prove fault.[5] On the contrary, recovery is swift and certain. Under Florida workers' compensation, the injured party is provided with all medical treatment, disability benefits where applicable, and two-thirds of lost wages, untaxed. *See Fla. Stat.* §§440.12, 440.13, 440.15 and I.R.C. §104(a)(1). An employer failing to provide compensation coverage is not only permitted to be sued, but loses all of his affirmative defenses. *See Fla. Stat.* §440.06.

By requiring the farmer to purchase only workers' compensation coverage and not both workers' compensation and liability coverage, AWPA expressly indicates that an injured worker cannot seek bodily injury damages against the farmer under both methods. Were this not true, AWPA would require farm employers to purchase both coverages since the statute would not deliberately expose farm employers to uncovered catastrophic losses. So too, if AWPA intended that a worker recover on his workers' compensation and again through a tort-type suit, the Act would require both coverages to insure that

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[5] In a related lawsuit, some of the same plaintiffs that are the respondents here successfully sued the tire manufacturer. In 1987, the jury found the proximate cause of the accident to be a defectively manufactured tire. *Etheridge v. Dunlop North America, Inc.*, Case No. 86-351-CIV-T-(B) (M.D. Fla. 1986)

funds for this additional remedy would be available to the worker. AWPA does not make this requirement, and AWPA professes to provide protection for *all* groups. And certainly it would make no sense for AWPA to provide for workers' compensation coverage if it intended to allow a covered farm worker to ignore his compensation remedy and sue his employer directly for his bodily injuries.

The statute was designed to require farmers to purchase cost-effective workers' compensation insurance to protect the workers. AWPA's insurance provision was designed to spread the risk and protect workers and farms. It was not designed to bankrupt farmers for uncovered catastrophic losses. AWPA provides reasonable and thorough recoveries for migrant workers under its express provisions. AWPA expressly left open a role for compensation benefits, that of providing for recovery of all bodily injury claims for workers injured in transit. Congress obviously knew that all workers' compensation statutes include an exclusivity rule. It makes no sense to suppose that Congress would expressly reserve a place for workers' compensation, but intend to preempt the exclusionary rule *without* saying so in its provision. This Court should not disturb this remedy.

D. The legislative history and purpose of AWPA refutes congressional intent to preempt state workers' compensation law.

In interpreting statutory language, this Court has stated that its duty is "to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and

with the general purposes that Congress manifested." *Commission of Internal Revenue v. Engle*, 464 U.S. 206, 217 (1984). This Court has often referred to the purpose of Congress as "the ultimate touchstone" in any preemption analysis. *Fort Halifox Packing Company, Inc. v. Coyne*, ___ U.S. ___, 107 S.Ct. 2211, 2216 (1987) (citing to *Malone v. White Motor Corp.*, 435 U.S. 497 (1978)). The legislative history of AWPA shows that Congress did not intend to preempt state workers' compensation exclusivity. Furthermore, giving effect to the substantive law of workers' compensation does not stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *California Federal Savings and Loan Association v. Guerra*, ___ U.S. ___, 107 S.Ct. 683 (1987); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

The first and foremost goal of AWPA is expressed in its purpose: protecting both workers and employers. *See* Pet. App. E, p. 31a. AWPA did so by repealing FLCRA and creating a new law that changed the duties and obligations which employers and contractors owed to the migrant or seasonal farm workers. Relative to motor vehicle transport, workers were newly protected because they obtained a private right of action against farm employers, granting them free attorneys to sue to enforce the motor vehicle safety provisions. AWPA ensures that a worker is protected for bodily injury by mandating insurance coverage under either a liability or workers' compensation policy. If a worker cannot avail himself of workers' compensation coverage, the worker may sue to recover under the liability policy. Where a liability policy is not the available remedy, AWPA alternatively contemplates a workers' compensation claim as a substitute.

If the court of appeals' decision below is permitted to stand, an injured farm worker could simultaneously claim and collect workers' compensation benefits and tort damages (past and future pain and suffering, lost future wages and additional past wage losses) in district court. These additional damages are losses for which the farm employer is uninsured because Congress told him it was unnecessary. In order to protect themselves now, the farm employer must, under the court of appeals' opinion, purchase an additional liability policy or bond – insurance that AWPA specifically rejected when workers' compensation coverage existed. For many farmers, even the immediate purchase of double coverage comes too late for claims for past injuries on which the statutes of limitation have not run. These farm employers would already be exposed to liability for past catastrophic losses. It is difficult to accept the premise that a statute designed to clarify rights and duties, to protect all parties, and to prevent unnecessary litigation, was meant to unravel this way. "Interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with legislative purpose are available." *Griffin v. Oceonic Contractors, Inc.*, 458 U.S. 564, 575 (1982). AWPA was designed to work and it was working well until the Eleventh Circuit opinion.

The analysis from the court of appeals is that there will be no deterrent for noncompliance with the motor vehicle safety provisions if the farmer's workers' compensation covers a bodily injury claim under AWPA. AWPA, however, provides that outside the scope of bodily injury claims, the farm worker may still sue to enforce the statute. It is only when a farm worker's

damages are recoverable through workers' compensation, that the farm worker is no longer free to obtain an additional award for bodily injury.

There are a number of additional, sufficient incentives compelling a farmer to provide his workers with safe vehicles despite workers' compensation exclusivity. First, workers' compensation premiums are based on the injury experience rate. If an employer has an unsafe record, his rates will naturally increase. *See* 1 A. Larson, *The Law of Workmen's Compensation*, at 14 & n.18. In Florida, the state requires insurance companies to conduct safety inspections of vehicles used in the work place. Penalties are assessed against companies which fail to comply with a standard set out by the Division of Workers' Compensation. *See Fla. Stat.* §440.56. AWPA can impose criminal sanctions on an employer for violation of safety standards, including fines of up to $1,000.00 and a prison term of up to one year. *See* 29 U.S.C. §1851. The Secretary of Labor can also seek injunctions and impose civil money penalties of up to $1,000.00 for each violation of the provisions. *See* 29 U.S.C. §§1852 and 1853. The court of appeals' opinion totally ignores these menacing and highly motivating provisions.

Finally, AWPA was consistently referred to by its sponsors and drafters as a "consensus bill," a "compromise worked out by farm worker representatives and employer representatives to balance fairness to the migrant workers with fairness to their employers." 128 Cong. Rec. 24,204 (1982) (statement by co-sponsor Senator Quayle); 128 Cong. Rec. 26,010 (1982) (statement of Representative Panetta); House Report at 1-4, Pet. App. H, p. 38a-40a. A compromise, by its very nature, is not

perfect for either side. "While none of these groups believes the bill to be ideal from its individual standpoint, there is important agreement that the bill materially improves the law." 128 Cong. Rec. 24,100 (1982) (statement of Deputy Undersecretary of Labor Collyer). The fact that a farm worker cannot always "have it all" under the Act does not mean that he is not being fully and fairly reimbursed for damages. Congress and the Department of Labor thought long and hard before incorporating workers' compensation into the Act, as witnessed by the concern expressed over workers' compensation exclusivity in the hearings on the 1978 FLCRA Amendments. The drafters were fully cognizant that exclusivity was an integral part of the workers' compensation remedy, yet deliberately chose to incorporate state workers' compensation law into AWPA after weighing all considerations. This workers' compensation compromise should be recognized and respected, not vilified because it may be a less than perfect remedy.

E. The Department of Labor Regulation, clarifying the incorporation of state workers' compensation law for the recovery of damages for bodily injury, correctly interprets AWPA.

The opinion of the court of appeals completely invalidated the Department of Labor regulation promulgated under AWPA which specifically stated:

> (b) Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss

> under the Act in the case of bodily injury or death.

29 C.F.R. §500.122(b), Pet. App. F, p. 36a.

It is difficult to understand the court of appeals' analysis in light of the legislative history of AWPA. The House Report setting out the legislative history of the Act specifically states that the United States Department of Labor representatives were participants in the negotiations which resulted in the consensus bill. House Report at 1, Pet. App. H, p. 38a-40a. Congress also recognized the Department of Labor as a key player in drafting AWPA: "For the past 18 months the Department of Labor has engaged in extensive negotiations with the various interest groups***." 128 Cong. Rec. 24,090 (1982) (statement of co-sponsor Senator Hatch). In the House, Representative Erlenborn recognized the Department of Labor, particularly Assistant Deputy Undersecretary Craig Berrington, as "the leader and negotiator in these extensive give-and-take meetings." 128 Cong. Rec. 26,008 (1982) (statement of Representative Erlenborn). Representative Erlenborn also stated that "all interested parties, agricultural employers, representatives of migrant workers, and the AFL-CIO reached a consensus in support of this bill***With this bill, the parties most affected agree that their problems have been solved." *Id.*

If the regulation drafted by the Department of Labor had not comported with the consensus opinion of the parties affected by AWPA, there was certainly an opportunity to voice an objection before the regulations were finalized. In fact, on April 12, 1983, interim regulations of AWPA and a request for comments were published in Federal Register. 48 Fed. Reg. 15800, No. 71 (April 12,

1983). The publication described AWPA as "the culmination of 18 months of cooperative efforts by the Department of Labor, key members of congressional committees and their staffs, major agricultural employer organizations, the AFL-CIO and the migrant legal action program to bring about needed reform in this area." *Id.* Interested persons were given an opportunity to submit comments to the Wage and Hour Division within 30 days after publication of the interim regulations in the Federal Register. *Id.*

Objections to the wording of the regulations and suggestions for their clarification were set out in the Federal Register published on August 12, 1983. 48 Fed. Reg. 36736, No. 157 (August 12, 1983). The only reference to Section 500.122 in its entirety was a paragraph stating that "in response to suggestions from various commentators, many wording changes were made in these sections to make clear the coverage and level of insurance required by the Act." *Id.* Significantly, no changes were made to the pertinent portion, nor were any objections noted. This regulation was later codified as 29 C.F.R. §500.122(b). If the representatives of the farm workers did not believe that the regulation reflected the intent of AWPA, such an objection could certainly have been submitted at that time. Thus, the consensus opinion upon which AWPA was based contemplated state workers' compensation exclusivity.

Normally, the regulations promulgated by the government body responsible for interpreting or administering a statute are entitled to considerable respect. *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155, 158 n.4 (1981). Furthermore, if a statute is silent or ambiguous with

respect to a question at issue, it is the long standing practice of this Court to defer to the regulating agency's construction of a statutory scheme unless the legislative history, purpose, or construction of a statute "*clearly* reveals a contrary intent on the part of Congress." *Chemical Manufacturers Association v. Natural Resources Defense Council, Inc.*, 470 U.S. 116, 126 (1985) (emphasis added). *See also Japan Whaling Association v. American Cetacean Society*, ___ U.S. ___, 106 S.Ct. 2860, 2868 (1986); *Zenith Radio Corporation v. United States*, 437 U.S. 443, 450-51 (1978).

The most extensive analysis concerning the deference to be given by courts to agency regulations, however, is found in this Court's decision of *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). *Chevron* held that "the power of an administrative agency to administer a congressionally created***program necessarily requires the formulation of policy in the making of rules to fill any gap left, implicitly or explicitly, by Congress." (citing *Morton v. Ruiz*, 415 U.S. 199, 231 (1974)). The *Chevron* decision also noted that "If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of this statute. The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* and n.11. Finally, the *Chevron* court gave the following sensible directive:

> We have long recognized that considerable weight should be accorded to an executive

department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations

"has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations." (citations omitted)

" . . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned. *United States v. Shimer*, 367 U.S. 374, 382, 383 (1961)."

46 U.S. at 842-845.

In the absence of clear legislative intent to the contrary, the court of appeals was required to give deference to the Department of Labor's regulation.

II.

THE POSITION ADOPTED BY THE COURT OF APPEALS IS UNTENABLE AND UNWORKABLE.

In its opinion below, the court of appeals ignored the intent of AWPA, focused instead on its repealed precursor FLCRA, and then misapplied FLCRA's legislative history. Specifically, the court of appeals reasoned that because Congress rejected an amendment to incorporate

workers' compensation into FLCRA in 1978, that Congress never could have intended to make workers' compensation, where applicable, the exclusive remedy for bodily injury under AWPA. This reasoning misconstrues both the thrust of the congressional hearing surrounding the proposed 1978 amendments to FLCRA and the intent of AWPA to effect a compromise. FLCRA required liability insurance for transient crew leaders, not farm employers, like Adams Fruit. AWPA involved workers' compensation insurance for fixed-situs employers like Adams Fruit, who could purchase workers' compensation coverage for their farm workers. The court of appeals' opinion also misconstrues the testimony of both Representative Ireland[6] and Assistant Secretary of Labor Donald Ellisburg[7] at the 1978 FLCRA hearings. *See* Farm

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[6] Representative Ireland's comments are not accurately stated in the opinion below. His comments involved a potential problem with deleting policy exclusions for workers' compensation coverage in motor vehicle liability policies purchased by labor contractors so that liability coverage could attach. It was the insurance carriers who feared that policies written that way would permit a worker to recover both workers' compensation and liability damages (double dipping). Thus, the carriers were resisting selling insurance to those contractors. Representative Ireland hoped to clarify the role of workers' compensation in those policies through his bill, which would provide that the workers' compensation would be exclusive, if applicable.

[7] The quotations of Mr. Ellisburg contained in the Eleventh Circuit opinion are taken out of context. They fail to include his preceding comments which made clear that he was speaking about the lack of a true employer-employee relationship between workers and transient crew leaders. Thus, he feared that workers' compensation protection was an unsatisfactory component in the regulation for crew leaders under FLCRA.

Labor Contractor Registration Act: Hearings Before the Subcomm. on Economic Opportunity of the Comm. on Educ. and Labor, 95th Cong., 2d Sess. 4 (1978), pp. 34, 56-57. Under FLCRA, Congress weighed the benefits and disadvantages of allowing crew leaders to rely on workers' compensation coverage, and voted down the proposed amendment. The bottom line, however, is that this was legislative history peculiar to FLCRA, *not* to AWPA.

The court of appeals' proposal to offset workers' compensation coverage from the amount received through an additional lawsuit under AWPA is an unworkable and vaguely-defined solution. First, a set-off would turn every workers' compensation claim into a mere preliminary step before an additional full-blown federal tort-trial for the same bodily injuries. This approach would generate excessive and needless litigation. In many cases, a set-off is impossible under some states workers' compensation plans. For example, an Oregon court recently followed the court of appeals' reasoning in *Fletes v. John I. Haas, Inc.*, Civ. No. 89-89 FR (D.Ore. 1989) Pet. App. I, p. 41a, entering judgment for the plaintiffs, but permitting workers' compensation set-off. However, the duty to provide medical services under Oregon workers' compensation law continues for the life of the worker. *See* ORS 656.245(1). This makes set-off impossible to determine and provides overlapping recovery. Furthermore, there is nothing to prevent a farm worker from recovering benefits for bodily injuries in an action under AWPA from his employer and then subsequently recovering benefits under state workers' compensation laws when it is simply too late to provide for an offset.

Finally, and most importantly, the court of appeals' decision would leave farm employers scrambling for duplicate insurance coverage when Congress expressly assured them that "no additional insurance for damage to persons need be obtained." House Report at 20. This solution leaves farmers unprotected for present and past claims where statutes of limitation have not run. Some of these claims could involve catastrophic injuries that could bankrupt the farm employer. It is inconceivable that Congress *intended* this result when it drafted its consensus statute to clarify obligations and to protect all concerned.

In sum, the court of appeals' opinion was misguided. Adams Fruit Company requests this Court to reverse the judgment below and to remand with instructions consistent with the judgment entered by the Middle District of Florida, holding that the workers received their actual damages for bodily injury and resultant lost wages through workers' compensation benefits.

CONCLUSION

The judgment of the court of appeals below should be reversed and remanded with instructions consistent with the order of the Middle District of Florida granting summary judgment to the petitioner, Adams Fruit Co.

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No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC., a Florida Corporation,

Petitioners,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILL, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

The Respondents, Ramsford Barrett, et al., request that this Court deny the petition for writ of certiorari, seeking review of the Eleventh Circuit Court of Appeals opinion entered March 15, 1989, 867 F.2d 1305 (11th Cir. 1989).

STATEMENT OF THE CASE

This action was brought by 10 migrant farm workers who were involved in a serious van accident while being transported by their employer, Adams Fruit Company, Inc., in 1985. The farm workers brought an action pursuant to the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801 *et seq*. The parties settled the case in regard to all of the claims but the ones brought pursuant to the MSAWPA's automobile safety provisions, 29 U.S.C. §1841. On summary judgement, the District Court for the Middle District of Florida found that the workers' claims in regard to the automobile safety provisions were barred by the Florida Workers Compensation Statute's exclusivity provisions. *Barrett, et al., v. Adams Fruit Company, Inc.*, No. 86-1301-Civ-T-17 (M.D. Fla. Oct. 29, 1987). The workers appealed this decision to the Eleventh Circuit, which reversed and remanded the case. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). The Eleventh Circuit held that the workers' private right of action under the MSAWPA is not barred by the exclusivity provision of Florida's workers compensation law. The Adams Fruit Company seeks a writ of certiorari to review the opinion below.

ARGUMENT IN SUPPORT OF DENYING THE WRIT

1. THERE IS NO WELL-DEVELOPED CONFLICT CREATED BY THE DECISIONS IN FOURTH AND ELEVENTH CIRCUIT COURTS OF APPEAL.

The petitioners assert that the Eleventh Circuit, in its opinion in *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d

1305 (11th Cir. 1989) erroneously interpreted the legislative history of the MSAWPA, relied on the legislative history of a predecessor act, and wrongly rejected a valid Department of Labor regulation. The petitioners arguments flounder on both points.

After an exhaustive review of the legislative history of the MSAWPA and its predecessor, the Farm Labor Contractor Registration Act, the Eleventh Circuit, in *Barrett*, has held that 29 U.S.C. §1854 preempts the provision of the Florida Workers Compensation Law which states that Florida workers compensation benefits shall be the exclusive remedy when those benefits are available, §440.11 Florida Statutes (1987). The court held that the state workers compensation statute was preempted only to the extent that the state statute conflicts with the private right of action contained in the MSAWPA.

The Eleventh Circuit rejected the reasoning of the Fourth Circuit in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987) in reaching its decision. These two decisions are the only federal circuit court decisions construing the private right of action section of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), 29 U.S.C. §1854, with state workers compensation exclusivity provisions.

Although the cases present an apparent conflict, this conflict may never develop into a real conflict. The decision in *Roman v. Sunny Slope Farms, Inc.*, concerns a different provision of MSAWPA than the one giving rise to the *Barrett* case. In *Roman*, a migrant farmworker sued for injuries which he allegedly sustained after being sprayed by pesticides. The employment arrangement

required that the employer provide protective clothing and workers compensation coverage. Although MSAWPA does not contain a specific provision regarding pesticides, the farmworker argued that he and the employer had an agreement regarding protection from pesticides. A violation of the working arrangement is actionable under the MSAWPA. 29 U.S.C. §1822(c). In these circumstances the *Roman* court upheld the exclusive remedy provision of the workers compensation statute. The *Roman* case was decided on facts that bear little resemblance to the facts in *Barrett*.

In the Eleventh Circuit decision in *Barrett*, however, the section of the MSAWPA at issue, 29 U.S.C. §1841 (c). specifically regulates the transportation of farmworkers. Moreover, this section requires that employers of farmworkers purchase liability insurance, and states that the insurance requirement is met when state workers compensation insurance has been purchased. 29 U.S.C. §1841(c). It is important, as the Eleventh Circuit has stated, that without the private right of action, the automobile safety provisions would be nullified, since workers compensation coverage would protect the farmer against liability even when the farmer completely fails to follow safety requirements.

The two decisions that this Court is urged to consider do not constitute a fully developed conflict. This Court in *McLaughlin v. Richland Shoe Co.*, ___ U.S. ___, 108 S. Ct. 1677 (1988) reviewed the meaning of the term "willful" as used in the statute of limitations provision of Fair Labor Standards Act. When the conflict was decided by the Court, it was an issue that had been analyzed by various

courts, and the application of the two conflicting standards had been tested many times. *Id.* 108 S.Ct. 1680, n.1; 1681, n.11. This Court in the *Richland Shoe Co.* case, was able to make a reasoned decision in light of the tested application of both standards.

The *Fletes v. John I. Hass, Inc.*, case, which follows *Barrett*, may indicate the narrow scope of *Roman*. In *Fletes v. John I. Hass Inc.*, No. 89085-FR (D. Ore. June 2, 1989), as in the *Barrett* case, an action was brought after a farmworker injury that occurred while the farmworker was being transported to work. The District Court in *Fletes* held that the transportation safety requirements of the MSAWPA would be effectively unenforceable if the availability of workers compensation benefits barred an action for noncompliance with the transportation safety requirements. The decision in *Roman* may, in the future be limited to personal injury that is not the subject of specific legislation in the MSAWPA.

The respondent urges that this Court refrain from considering this case until the appellate courts have had a greater opportunity to develop these issues.

II. THE DECISIONS IN THE ELEVENTH CIRCUIT AND FOURTH CIRCUIT DO NOT CREATE AN EMERGENCY FOR FARMERS NOR A PROBLEM FOR THE COURTS

a. Farmers Are Not "Endangered" by *Barrett*

Petitioner argues that immediate review is warranted because 1) farmers are uncertain as to standards and their obligations under MSAWPA; 2) growers who purchase

workers compensation coverage may face additional liability. Neither of these complaints are valid, but to the extent that they exist at all, they stem from Petitioner's disagreement with *Barrett*, and not from any conflict among circuits.

Petitioner wrongly asserts that different rights and standards are created by giving full effect to the private right of action in MSAWPA. In all jurisdictions, employers covered by the MSAWPA are required to provide safe transportation to their workers as defined by the MSAWPA and its regulations. The employers' liability under MSAWPA is limited to circumstances in which the employer has failed to abide by the law's specific requirements.

The MSAWPA clearly requires agricultural employers to make vehicles safe for transportation of migrant farmworkers. 29 U.S.C. §1841; 29 C.F.R. §§500.100-105. These motor vehicle provisions require, *inter alia*, that vehicles used to transport farmworkers hold no more than their maximum capacity; that each occupant have a seat belt; and that all objects within the vehicle be securely fastened. *Id*. In addition, an employer who transports migrant farmworkers is required at a minimum to purchase liability insurance or to post a bond for equivalent protection. 29 U.S.C. §1841(b)(1)(C). This latter requirement is satisfied when the employer provides workers compensation coverage. Nowhere in the Act does Congress provide that workers compensation coverage will protect an agricultural employer from any further liability for any physical injuries caused by violations of the Act.

The petitioner also disingenuously argues that the MSAWPA liability insurance requirements were designed to protect the employer, and not the worker. This turns history on its head. The requirement of minimal insurance protection is for the protection of the farmworker in the case of an accident, and is not designed to inform agricultural employers how to best shield themselves from liability. In passing the MSAWPA, Congress referred to its predecessor act, the Farm Labor Contractor Registration Act, and the need for stronger protection of farmworkers. House Report 97-885, at 3, reprinted at 1982 *U.S. Code Cong. & Adm. News*, 4547, 4587. Among the chief concerns was that of transportation safety, and workers compensation benefits were criticized as being inadequate. *Hearings on Farm Labor Contractor Registration Act*, 95th Cong. 2d Sess., February 22-23, 1978 at page 132. These benefits were discussed in the context of a tragic accident, in which 19 of 47 farmworkers being transported were killed. *Id*. The private right of action provision of the MSAWPA, as noted by the Eleventh Circuit, has been central to the enforcement of the safety provisions.

The insurance provision requirement was passed by Congress with no debate. There is no support either in the Act itself or in the legislative history for the proposition that the insurance requirement was designed to instruct private employers how to best shield themselves from liability. In fact, an attempt to amend the Farm Labor Contractor Registration Act to state that workers

compensation would be the exclusive remedy was flatly rejected by Congress.[1]

The issue is not whether the MSAWPA directs farmers properly on how to purchase insurance, as the petitioners urge this Court. The MSAWPA clearly instructs agricultural employers to meet its safety requirements, and allows workers a private cause of action if the employer fails to do so.

b. The Conflict Between The Circuits Is Not One Conducive To Forum-Shopping By Parties.

Agricultural employers, cannot, because of the unique nature of their business, move their industry from one area to another in order to secure a more favorable jurisdiction in regard to litigation. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

The apparent conflict here would not subject courts to the problems that occur when large corporations, conducting business in various jurisdictions, are amenable to suit in various locations. In the *Barrett* case, the farmworkers were all Florida residents, employed by a Florida employer, litigating in regard to an accident that occurred in Florida. Similarly, in *Roman*, a farmworker was working in South Carolina, for a South Carolina grower, when

[1] H.R. 10631, 95th Congress, 2d Sess., *reprinted in Farm Labor Contractor Registration Act. Hearings on H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922. Before the Subcomm. on Economic Opportunity* of the Comm. in Educ. and Labor, 95th Cong. 2d Sess. 4 (1978).

he suffered injuries from pesticide poisoning in South Carolina. Finally, the *Fletes* case involves a farmworker employed in Oregon, by an employer doing business in Oregon, who was injured in a vehicle operated by the grower. These cases show that there is very little likelihood that these cases can be the subject of forum-shopping.

III. THE ELEVENTH CIRCUIT HAS PROPERLY CONSTRUED THE MSAWPA PRIVATE RIGHT OF ACTION PROVISION

Petitioner does not claim that the Eleventh Circuit misconstrued the plain language of the MSAWPA, nor could it. The MSAWPA does not explicitly state that workers compensation benefits are the exclusive remedy where available. Rather, petitioner argues that "the Eleventh Circuit ignored the intent of AWPA, focused instead on its repealed precursor, FLCRA, and misapplied FLCRA legislative history." Petitioner's brief, p. 12. This is simply false.

The Eleventh Circuit has carefully considered the underlying legislative history of the MSAWPA, its statutory scheme and congressional intent and held that the exclusivity provision of the Florida Workers Compensation law "is preempted because its stands as 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' ". (citation omitted). *Barrett*, at p. 12a Petitioner's Appendix.

The Eleventh Circuit, in deciding *Barrett*, applied the standards used by this Court in *California Fed. Sav. and*

Loan Ass'n v. Guerra, 479 U.S. 272 (1987). That case outlines three ways in which a state statute may be preempted by a federal statute. *Id.* at 280-281. The Eleventh Circuit found no complete preemption of the Florida workers compensation statute intended by Congress in MSAWPA, because preemption was neither expressly required nor mandated by the statutory scheme. However, it held that the exclusivity provision was preempted because it frustrated the purpose of the Act.

The petitioners also falsely claim that the Eleventh Circuit decision conflicts with *DeCanas v. Bica*, 424 U.S. 351 (1976), a case which is directly on point. In fact, *DeCanas v. Bica* is consistent with the other Supremacy Clause cases cited by the Eleventh Circuit in deciding *Barrett*; any claim to the contrary is simply untrue. In *DeCanas v. Bica*, this Court held that the Immigration and Nationality Act did not preclude *all* state legislation regarding employment of aliens. *Id.* at 265. Similarly, the Eleventh Circuit held that the MSAWPA preempted the state workers compensation provision only to the extent it conflicted with MSAWPA's private right of action. *DeCanas v. Bica* when applied, does not indicate a different result in *Barrett*. The Eleventh Circuit in deciding *Barrett* has not misapplied or misconstrued preemption law.

Finally, the petitioner also asserts that the Eleventh Circuit's rejection of the Department of Labor regulation which provides for exclusivity of workers compensation benefits, 29 C.F.R. §500.122(b), renders the Court's decision defective. Again, the petitioner misleads this Court by stating that the Eleventh Circuit "chose to ignore" the "controlling and sensible directive" of *Japan Whaling*

Association v. American Cetaceen Society, ___ U.S. ___, 106 S. Ct. 2860 (1986). Petitioner's brief, p. 17. The Eleventh Circuit rejected the regulation because it conflicted with the intent of Congress and the purposes of the Act, citing *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) in support of its conclusion. The Court's rejection of the regulation was well-founded in law, and is not an issue that merits reconsideration.

The Eleventh Circuit's reasoning in *Barrett* is well-grounded in pertinent decisions of this Court, and the analysis applied is sound and well-reasoned. For these reasons, this Court should not hear this case.

CONCLUSION

For these reasons, the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit should be denied.

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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF THE PETITION

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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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MOTION OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF THE PETITION

Pursuant to Rule 36 of this Court, the American Farm Bureau Federation (AFBF), the Florida Farm Bureau Federation (FFBF), the Florida Citrus Mutual (FCM), the Florida Fruit and Vegetable Association (FFVA) and the

National Council of Agricultural Employers (NCAE) request leave to file the accompanying brief as *amici curiae* in support of the petition for a writ of certiorari. Counsel for the petitioner has consented to the filing of this brief. Counsel for the respondents has orally consented, but has not provided written consent.

AFBF was formed in 1919 and is the nation's largest general farm organization with member organizations in 49 states and Puerto Rico representing more than three and one-half million member families. FFBF has its principal offices in Gainesville, Florida and is composed of 62 county Farm Bureau organizations and, like AFBF, promotes, protects and represents the business, economic, social and educational interests of farmers and ranchers. FCM has its principal offices in Lakeland, Florida and promotes, protects and represents the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida. FFVA has its principal offices in Orlando, Florida and directs industry policies and protects property interests of member fruit and vegetable growers and operators in the State of Florida. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. AFBF and NCAE participated in drafting the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) and their respective members are highly concerned with the proper interpretation and implementation of the Act.

All fifty states as well as the District of Columbia and Puerto Rico have state workers' compensation statutes. All such statutes either expressly cover agricultural employees or permit agricultural employers to elect coverage for their employees. Further, all such statutes specify that

remedies under the state workers' compensation statute are the exclusive avenue of recovery for workplace injuries.

The Eleventh Circuit's decision in *Barrett* v. *Adams Fruit Company, Inc.*, has deviated from this scheme of recovery for workplace injuries by concluding that farmworkers as a group have an additional avenue of recovery under AWPA. This decision, besides creating a clear split in the circuits, will have a devastating affect on the farmers of America that are members of the *amici* filing this motion.

Accordingly, the AFBF, FFBF, FCM, FFVA and NCAE seek to submit this *amici curiae* brief to assist the Court in evaluating the public importance and practical consequences of permitting agricultural employees to recover double benefits for work related injuries as presented in the petition for a writ of certiorari and respectfully request that their motion for leave to file the accompanying brief as *amici curiae* be granted for that purpose.

Respectfully submitted,

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INTEREST OF THE AMICI CURIAE

The American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-For-Profit Corporation Act of the State of Illinois. It has its principal offices in Park Ridge, Illinois. AFBF was founded to protect, promote and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in 49 states and Puerto Rico (including the Florida Farm Bureau Federation), representing more than three and one-half million member families. AFBF farmer and rancher members produce virtually every kind of agricultural commodity produced in the United States. As was noted repeatedly in the legislative history, AFBF played an important role in the drafting of and negotiations over the Migrant and Seasonal Agricultural Workers Protection Act. It was one of the parties to the consensus that led to this important law. See, e.g., 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Robert B. Collyer); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn). The AFBF thus has both a vital interest in seeing that the Act is properly interpreted and a valuable insight into the meaning and intent of the Act.

The Florida Farm Bureau Federation (FFBF) is a nonprofit cooperative membership association organized under the laws of the State of Florida. It has its principal offices in Gainesville, Florida. FFBF's purpose is to apply joint and collective efforts to more effectively promote, protect and represent the economic, social and educational interests of farmers and ranchers in the State of Florida. FFBF is comprised of 62 county Farm Bureau organiza-

tions with a total membership of more than 70,000 member families in the State of Florida.

The Florida Citrus Mutual (FCM) is a voluntary non-profit cooperative association organized under the laws of the State of Florida. It has its principal offices in Lakeland, Florida. FCM's purpose is to promote, protect and represent the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida.

The Florida Fruit and Vegetable Association (FFVA) is a non-profit member cooperative organized under the laws of the State of Florida. It has its principal offices in Orlando, Florida. FFVA's purpose is to direct industry policies and protect property interests of member fruit and vegetable growers and operators in the State of Florida.

The National Council of Agricultural Employers (NCAE) is a non-profit membership association organized in 1964 under the laws of the District of Columbia. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. NCAE members in 35 states hire about 75 percent of the U.S. agricultural work force. NCAE participated with AFBF in drafting the Migrant and Seasonal Agricultural Worker Protection Act and NCAE members are highly concerned with the proper interpretation and implementation of the Act.

The American Farm Bureau Federation, the Florida Farm Bureau Federation, the Florida Citrus Mutual, the Florida Fruit and Vegetable Association and the National Council of Agricultural Employers have a direct interest in the outcome of this case. The court of appeals' ruling that the Act pre-empts the exclusive remedy provisions of workers' compensation laws is contrary to the interest

of AFBF, FFBF, FCM, FFVA, NCAE and their members who employ migrant and seasonal laborers in their agricultural operations.

STATEMENT

This case presents the question of whether § 1854 of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1854, pre-empts the exclusive remedy provisions of state workers' compensation laws.

1. AWPA regulates activities of farm labor contractors and employers and "assure[s] necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." The Act protects agricultural workers by requiring employers and contractors to disclose relevant information and maintain records,[1] to pay wages promptly and in full,[2] to refrain from requiring workers to buy goods or services solely from them,[3] to abide by the terms of their contracts with workers,[4] to provide safe and sanitary housing,[5] and—most importantly for this case—to provide safe transportation for workers.[6]

Section 1841 of AWPA deals with the safety of motor vehicles used to transport migrant and seasonal workers. It requires that such vehicles conform to federal and state

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[1] 29 U.S.C. §§ 1821, 1831.
[2] 29 U.S.C. §§ 1822(a), 1832(a).
[3] 29 U.S.C. §§ 1822(b), 1832(b).
[4] 29 U.S.C. §§ 1822(c), 1832(c).
[5] 29 U.S.C. § 1823.
[6] 29 U.S.C. § 1841.

safety standards and that vehicle operators carry insurance or post a bond "against liability for damage to persons or property * * *." 29 U.S.C. § 1841(b)(1)(c). Subsection (c) provides that "[i]f an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death * * * [n]o insurance policy or liability bond shall be required * * * if such workers are transported only under circumstances for which there is coverage under such State law." 29 U.S.C. § 1841(c).

The Act is enforced in several different ways. Section 1851 authorizes criminal prosecution of those who willfully or knowingly violate AWPA. In addition, the Secretary of Labor is authorized to bring civil actions in court seeking injunctive relief (29 U.S.C. § 1852) and to assess civil fines in administrative proceedings (29 U.S.C. § 1853). Finally—and again most importantly for this case—section 1854 authorizes any person aggrieved by a violation of AWPA to file suit for equitable relief, actual damages or statutory damages of $500 per plaintiff per violation.

2. Respondents, ten farm workers employed by petitioner, sued under § 1854 claiming that they had been injured in a motor vehicle accident while being transported to work in an allegedly unsafe van owned by petitioner. They sought damages for their injuries even though they had already applied for and received workers' compensation benefits. Florida law provides that "[t]he liability of an employer [under the workers' compensation law] shall be exclusive and in place of all other liability of such employer to * * * the employee * * *." *Fla. Stat.* § 440.11(1). The United States District Court for the Middle District of Florida granted petitioner's motion for partial summary judgment on the ground that the Florida workers' compensation statute provided respondents' exclusive remedy. Pet. App. 19a. The United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 15a.

3. The court of appeals acknowledged that AWPA neither occupies the regulatory field nor expressly preempts state law. In fact, as the court noted, AWPA expressly provides that it "is intended to supplement State law, and [does] not excuse any person from compliance with appropriate State law and regulation." Pet. App. 4a (quoting 29 U.S.C. § 1871). The court considered the case under the branch of pre-emption doctrine that asks whether "the state law stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " Pet. App. 4a (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

As a threshold matter, the court declined to give effect to the Secretary of Labor's regulation that provides that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death."[7] The court held that because the case involved a "question[ ] of statutory construction * * * the deference with which we would ordinarily treat administrative regulations is not appropriate." Pet. App. 5a.

The court then examined the history and purpose of the Act and concluded that it pre-empted the exclusive remedy

[7] 29 C.F.R. § 500.122(b). This regulation relates only to the section of the Act governing motor vehicle safety and insurance. It therefore directly governs this case, but does not govern cases involving injuries arising from other violations of the Act (e.g., unsafe housing, failure to abide by contractual safety provisions). It was not directly relevant to the Fourth Circuit's decision in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, 108 S.Ct. 163. (1987).

provision of state workers' compensation laws. In interpreting the 1982 Act, the court placed considerable reliance on an effort in 1978 to amend the Act's predecessor, the Farm Labor Contractor Registration Act ("FLCRA"), which was repealed by AWPA. The unsuccessful amendment to FLCRA would have given effect to the exclusive remedy provisions of state workers' compensation laws. Pet. App. 7a-8a.

The court held that the provision for a private right of action was central to the Act's enforcement and would be frustrated if effect were given to state workers' compensation laws. Pet. App. 10a-12a. The court distinguished this Court's holding in *United States* v. *Demko*, 385 U.S. 149, 152 (1966), that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Demko*, the court of appeals reasoned, involved two federal statutes (rather than one federal and one state law), and the legislative history of AWPA, in the court of appeals' view, implied that "Congress intended to provide heightened protection for migrant and seasonal agricultural workers." Pet. App. 13a. In addition, the court of appeals reasoned that AWPA intended to provide workers with full recovery for their actual damages. Florida workers' compensation law allows for recovery of only two-thirds of back wages. Pet. App. 14a.

The court of appeals forthrightly acknowledged that its decision directly conflicted with that of the Fourth Circuit in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, 108 S.Ct. 163 (1987). The court held that "[w]e cannot agree with the fourth circuit that § 1871 compels a conclusion of nonpreemption." Pet. App. 5a, n.1. *See also* Pet. App. 3a (acknowledging that the district court followed the decision of the Fourth Circuit).

REASONS FOR GRANTING THE PETITION

The conflict between the Fourth and the Eleventh Circuits leaves agricultural employers in an intolerable state of uncertainty. According to the Secretary of Labor's regulation and the Fourth Circuit decision, an agricultural employer who provides workers' compensation insurance to its migrant and seasonal agricultural workers need not obtain additional insurance (or anticipate additional financial liability) for accidents and injuries covered by workers' compensation. The workers' compensation coverage would suffice because workers' compensation would be the exclusive remedy. This is in accord with the expressed intent of Congress "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damages to persons need be obtained."[8]

But in light of the Eleventh Circuit's decision—which afforded absolutely no deference to the Secretary of Labor—agricultural employers can no longer be confident that workers' compensation will cover their liability. By holding that AWPA pre-empts the exclusive remedy provisions of the workers' compensation laws in effect in every state, the court of appeals has placed agricultural employers in the unfortunate position of having either to purchase additional insurance they might not need or to assume that the Secretary's regulation still governs and thus expose themselves to substantial financial risk. In addition, by requiring additional insurance or exposing agricultural employers to greater financial risks, the conflict places

[8] H.R. Rep. No. 97-885, 97th Cong., 2d Sess. 20, *reprinted in* 1982 U.S. Code Cong. & Ad. News 4566 (hereinafter referred to as "House Report").

farmers in the Eleventh Circuit and in any other district or circuit that might follow the Eleventh Circuit's approach at a competitive disadvantage with those in the Fourth Circuit and elsewhere.[9]

This Court should grant the petition in order to resolve the conflict among the circuits and the doubt over the validity of the Secretary of Labor's regulations and to relieve the uncertainty of farmers across the nation.

I.

THE COURT OF APPEALS' DECISION THAT AWPA PRE-EMPTS STATE WORKERS' COMPENSATION LAWS IS INCORRECT AND CONFLICTS WITH THE DECISION OF THE FOURTH CIRCUIT AND THE APPROACH TAKEN BY THIS COURT IN SIMILAR CASES.

A. The Court Of Appeals Erred In Deciding That AWPA Pre-empts State Law.

1. AWPA was enacted in 1982 as a consensus bill, with the support and cooperation of the Reagan administration, both parties in Congress, organized labor, migrant farm worker groups, and representatives of agricultural employers including the American Farm Bureau Federation.[10]

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[9] The United States District Court for the District of Oregon recently followed the Eleventh Circuit's approach, holding that AWPA pre-empts the exclusive remedy provision of Oregon's workers' compensation law. *Fletes* v. *John I. Haas, Inc.*, No. 89-85-FR (June 2, 1989).

[10] As Robert B. Collyer, Deputy Undersecretary of Labor, testified in support of the bill:

> This cooperative effort has now resulted in a consensus bill, endorsed by the AFL-CIO, the Migrant Legal Action Program and by major agricultural employer organizations, such as the American Farm Bureau Federation * * *.

128 Cong. Rec. 32,464. See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn).

The Act superseded entirely the Farm Labor Contractor Registration Act of 1963 ("FLCRA"). That statute had proven ineffective to protect workers and excessively burdensome on employers. AWPA was designed to improve the protection of workers while at the same time eliminating unnecessary administrative burdens and clarifying the responsibilities of employers. See 128 Cong. Rec. 32,459 (statement of Senator Hatch); Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Collyer); 128 Cong. Rec. 32,466 (statement of Senator Byrd); 128 Cong. Rec. 26,009 (statement of Representative Erlenborn); 128 Cong. Rec. 26,009 (statement of Representative Panetta).

One of the difficulties that Congress faced in drafting both FLCRA and AWPA stemmed from the fact that there were several different arrangements under which agricultural workers might be employed. FLCRA was aimed at correcting some of the abuses that were found when workers were supplied to farmers by labor contractors (commonly called "crew leaders") who moved with the harvest and supplied labor to several farmers at a time.[11] Many labor contractors were conscientious and honest, but other unscrupulous contractors exploited both workers and farm owners.

Among the many labor contractor abuses was transporting workers to farm worksites in unsafe, uninsured vehicles.[12] Because it was difficult for states to keep track

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[11] See 128 Cong. Rec. 26,010 (statement of Representative Panetta); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).

[12] See 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); House Report at 2.

of and regulate the ever-moving contractors, and because in several states, workers' compensation coverage was not mandatory for agricultural employers (and in other states' labor contractors did not fall within the definition of "employer"), those who were killed or injured in unsafe labor contractor vehicles were often left uncompensated. One of the reforms attempted by FLCRA was to require crew leaders to carry insurance to compensate the workers for any injuries they received during transport.[13]

Following the enactment of FLCRA and particularly the amendment of that law in 1974, a great deal of confusion arose over whether "fixed-situs" farm employers had to register as labor contractors and were covered by FLCRA.[14] Perhaps because they were easier to locate than crew leaders, migrant labor groups and, at times, the Department of Labor attempted to require farm owners who hired migrant workers to register as labor contractors and to enforce FLCRA against them even though the Act was clearly not designed to fit their situations.[15]

2. AWPA was intended in significant part to correct the abuses that occurred under FLCRA and to come to grips with the differences between labor contractors and fixed-situs agricultural employers. The Act retains the requirement that labor contractors register with the Department of Labor but makes it clear that this requirement does not apply to fixed-situs employers. 29 U.S.C. §§ 1802(7), 1811. On the other hand, the critical protections afforded to migrant and seasonal agricultural workers—including the requirement of safe, insured transport—apply without regard to whether the workers are employed directly by farm operators or through crew leaders.

[13] See Sen. Rep. No. 202, 88th Cong. 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 3695.

[14] See House Report at 2; 128 Cong. Rec. at 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).

[15] See House Report at 2-4; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).

As actual employers, farm operators are much more likely than labor contractors to be covered by (or to be eligible to elect coverage under) state workers' compensation laws.[16] In thirteen states plus the District of Columbia agricultural employers are required to carry workers' compensation coverage on the same terms as other employers.[17] Twenty-two other states require such coverage but include some limitations not applicable to other covered employees.[18] And in the remaining fifteen states, agricultural employers may elect to come under the workers' compensation law.[19] In all states, whether coverage is mandatory or elective, once an employer is covered, workers' compensation becomes the exclusive remedy for employee injuries.[20]

By covering workers employed directly by agricultural employers, AWPA vastly increased the number of workers who would be covered by both AWPA and state workers' compensation laws. But there is absolutely no indication that Congress intended to disturb the historic compromise embodied in workers' compensation statutes. That AWPA

[16] Fixed-situs agricultural employers are also much easier for states to keep tabs on and to ensure that required workers' compensation coverage is maintained.

[17] See 4 A. Larson, THE LAW OF WORKMEN'S COMPENSATION, App. A, Table 4, pp. 4-1 to 4-5.

[18] *Id.*

[19] *Id.*

[20] See 2A A. Larson at 12-1.

was not intended to pre-empt the exclusive remedy provisions of such state laws is demonstrated in two different ways. To begin with, Section 1871 expressly provides that AWPA "is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation."

In addition, AWPA specifically exempts employers covered by workers' compensation from the only insurance requirement under the Act, that found in § 1841 dealing with motor vehicle safety. That section provides that "[n]o insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State [workers' compensation] law." The sponsors of the bill—who wanted to clarify the obligations of farm employers—assured them "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.[21]

Giving effect to the language of Section 1841 and the expressed intent of Congress, the Secretary of Labor (of the Administration that introduced the bill) promulgated a regulation on August 12, 1983, shortly after AWPA became law, providing that:

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. § 500.122(b).

[21] See also Section-by-Section analysis prepared by Senate Labor Committee, 128 Cong. Rec. at 32,462; statement of Deputy Undersecretary Collyer, 128 Cong. Rec. 32,465.

3. The court of appeals disregarded the language of the statute and its legislative history and refused to defer to the interpretation of the Secretary of Labor. Relying on this Court's decision in *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-448 (1987), the court of appeals held that no deference is appropriate for questions of statutory construction. But as the language quoted by the court of appeals makes clear, *Cardoza-Fonseca* (which was itself quoting *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843, n.9 (1984)) stands for the far less sweeping proposition that "[t]he judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent * * *." In light of the language and history, the Secretary of Labor's construction of § 1841 can hardly be said to be "contrary to clear congressional intent."

Moreover, *Cardoza-Fonseca* examined the question of judicial deference in the context of agency adjudication, rather than agency rulemaking. The *Chevron* decision quoted in *Cardoza-Fonseca* dealt with deference to agency regulations, and the Court's analysis deserves a more complete exposition than that given by the court of appeals:

> If * * * the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, * * * the question for the court is whether the agency's answer is based on a permissible construction of the statute.
>
> * * *
>
> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations

> "has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations."
>
> ". . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." *United States* v. *Shimer*, 367 U.S. 374, 382, 383 (1961).

467 U.S. at 842-845 (citations and footnotes omitted.)

Congress specifically authorized the Secretary of Labor to promulgate regulations implementing AWPA. 29 U.S.C. § 1861. Certainly those regulations are entitled to at least some deference; the Eleventh Circuit afforded none.

4. The analysis of the court of appeals was faulty in several additional respects. The court's notion that if workers' compensation formed the exclusive remedy for workers' injuries employers "would have little incentive to comply with the transportation safety requirements set out in AWPA and its regulations" (Pet. App. 12a) is misguided. First of all, workers' compensation insurance premiums reflect the injury experience of an employer's workers; if an employer disregards safety requirements, it will suffer direct financial consequences.[22] Moreover, the Act also provides for civil fines to be imposed by the Department of Labor (29 U.S.C. § 1853) and—in cases of willful or knowing violations—even the possibility of criminal prosecution (29 U.S.C. § 1851). To say that employers covered by workers' compensation would have little incentive to comply with AWPA is to ignore reality.

[22] 1 A. Larson, at 14 & n.18.

Finally, the court of appeals was certainly correct in stating that AWPA was intended to allow workers to recover their losses, but there is absolutely no evidence that Congress intended to allow double recovery, once through workers' compensation and a second time through AWPA. The court's reasoning that a workers' compensation award undercompensates injured workers is precisely the argument this Court rejected in *United States* v. *Demko*, 385 U.S. at 152-153, and ignores the fact that workers' compensation benefits (unlike wages) are not taxed. I.R.C. § 104(a)(1).

B. The Court Of Appeals' Decision Conflicts With That Of The Fourth Circuit And With The Approach Taken By This Court.

In light of the statutory language, the legislative history and the Secretary of Labor's regulations, it is hardly surprising that the only court of appeals previously to decide the very issue presented in this case held "that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law [that] provides that it is the exclusive remedy, * * * the worker is bound by that provision." *Roman* v. *Sunny Slope Farms, Inc.*, Pet. App. at 29a. In that case, the plaintiff claimed that he was injured when he was sprayed with a toxic pesticide. He claimed that his employer failed to provide protective clothing as required by their written employment agreement and thus violated AWPA § 1822(c), which requires employers to abide by the terms of their agreements with workers. The plaintiff sued the employer under § 1854 even though he was covered under the South Carolina workers' compensation law.

The Fourth Circuit held that AWPA did not pre-empt the exclusive remedy provision of state law and affirmed the dismissal of the suit. The court noted that § 1871 expressed Congress's intention to supplement, rather than supplant, state law. Pet. App. 25a. It also relied on the fact that § 1841—which was not directly involved in that case but is in this case—exempted employees covered by state workers' compensation laws from the motor vehicle insurance law:

> In addition to demonstrating that Congress did not intend to pre-empt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

Pet. App. 26a. This Court denied certiorari, 108 S.Ct. 163.

The Eleventh Circuit reached precisely the opposite conclusion in this case. Even though this case directly involved § 1841, and was therefore a stronger case for giving effect to the state law, the court of appeals held that AWPA pre-empts state exclusive remedy laws. It is impossible to reconcile the two decisions. The Fourth Circuit held that even when the suit is not directly based on § 1841, suits for injuries under § 1854 of AWPA are precluded by the exclusive remedy provision of state workers' compensation law. The Eleventh Circuit, to the contrary, held that even when the suit *is* based on § 1841 (where the statutory language, the legislative history and the Secretary of Labor's regulation all argue against pre-emption), § 1854 pre-empts the exclusive remedy provision of state law and such suits are therefore not barred.

As the Fourth Circuit pointed out, a holding that AWPA pre-empts state workers' compensation law also conflicts with the approach taken by this Court in *United States* v. *Demko*, 385 U.S. 149 (1966) and *Johanson* v. *United States*, 343 U.S. 427 (1952). In *Demko*, a federal inmate employed in a prison industry was injured on the job and received compensation benefits under a special federal compensation statute, 18 U.S.C. § 4126. He then attempted to sue the government under the Federal Tort Claims Act. This Court considered the federal compensation statute to be the equivalent of a workers' compensation law and held that it provided the plaintiff's exclusive remedy:

> [T]he right of recovery granted groups of workers covered by such compensation laws is exclusive. * * * [W]here "the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." * * * [W]here there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.

Id. at 151-152 (quoting *Johanson* v. *United States*, 343 U.S. 427, 441 (1952)). See also *Patterson* v. *United States*, 359 U.S. 495 (1959).

Following the *Demko* approach, the Fourth Circuit in *Roman* held that state workers' compensation laws are the exclusive remedy for covered migrant workers injured on the job. But the Eleventh Circuit in this case held to the contrary, even though there was no "specific legislation" pre-empting the exclusive state remedy and even though the language of the federal statute, its history and the contemporaneous regulations of the Secretary of Labor indicate that Congress did not intend to pre-empt state law.

II.

THE COURT OF APPEALS' DECISION LEAVES AGRICULTURAL EMPLOYERS IN AN INTOLERABLE STATE OF UNCERTAINTY AND THREATENS TO DISRUPT THEIR OPERATIONS.

Agricultural employers in all 50 states and the District of Columbia either are required to maintain workers' compensation coverage (35 states and D.C.) or may elect to do so (15 states).[23] In all of the states, once an employee is covered, the remedies provided by workers' compensation are exclusive. Relying on the language of § 1841 and the regulations issued by the Secretary of Labor, agricultural employers throughout the nation have assumed that their workers' compensation insurance completely covers them for any liability for on-the-job injuries, just as it does nonagricultural employees. Particularly with regard to liability for employees injured in vehicle accidents, before now there seemed absolutely no reason to obtain additional insurance. In fact, Congress told farmers that "no additional insurance for damages to persons need be obtained." House Report at 20. The Eleventh Circuit's decision is contrary to the long held view that state workers' compensation statutes are a satisfactory method to compensate individuals for workplace injuries.

Now the decision of the Eleventh Circuit has created serious uncertainty. Farmers in Florida, Georgia and Alabama would be prudent to obtain additional insurance. Those in the adjacent Fourth Circuit may be able to rely on the *Roman* decision and assume that workers' compensation is the exclusive remedy, but even they have

[23] See 4 A. Larson, App. A, Table 4, p. 4-1.

reason to be nervous. For farmers elsewhere, the legal rules (and their potential liability) are completely in doubt.

Unfortunately, agriculture can be a hazardous occupation. The National Safety Council reported that in 1987 agricultural workers suffered 160,000 workplace injuries and 1,600 deaths. National Safety Council, *Accident Deaths* 97 (1988 ed.). A significant percentage of agricultural injuries resulted from motor vehicle accidents such as the one involved in this case.[24] Given the substantial risk of injury, it would be unconscionable to allow farm employers to remain in the uncertainty created by the Eleventh Circuit's decision.

Not only does the Eleventh Circuit's decision create intolerable uncertainty, but the conflict among the circuits creates a competitive imbalance among farmers. Those in the Eleventh Circuit (and now those in Oregon) must incur the added expense of additional insurance to cover injuries to workers (or must anticipate additional losses), while at least those in the Fourth Circuit (and perhaps those elsewhere) can rely on their workers' compensation coverage. In addition, the decision places agricultural employers (who must obtain additional insurance in excess of workers' compensation coverage) at a competitive disadvantage with employers in all other industries. This Court should not permit this inequity to continue.

[24] See Payton, *Farm Injuries*, 15 EMERGENCY MEDICAL SERVICES 28 (1986).

CONCLUSION

The petition for a writ of certiorari should be granted.

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No. 88-2035

IN THE

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OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

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Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

MOTION AND BRIEF OF AMICUS CURIAE THE NATIONAL COUNCIL OF SELF-INSURERS IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE BY THE NATIONAL COUNCIL OF SELF-INSURERS IN SUPPORT OF PETITIONER

Pursuant to Rule 36.3 of the rules of this Court, the National Council of Self-Insurers respectfully moves for leave to file the attached brief *amicus curiae* in support of the petitioner. Petitioner has consented to the filing of this brief. This motion is required by the absence of consent by the respondents.

The National Council of Self-Insurers speaks for major employers, frequently multi-state employers, of the United States who assume the direct responsibility for paying workers' compensation benefits for their employees, sometimes referred to as "self-insuring," under applicable state and federal workers' compensation laws. Approximately thirty percent of the employees in the United States work for self-insured employers. It is also the parent organization for twenty-five state self-insurance organizations, active in each state on workers' compensation issues. The National Council supports the workers' compensation laws as an essential part of the social and economic framework of our society.

Its interest in this case is in preserving that framework. The Decision and Opinion of the Eleventh Court of Appeals ignores the historic compromise of workers' compensation legislation described by this Court in *New York Central R. Co. v. White*, 243 U.S. 188, 37 S.Ct. 247, 61 L.Ed. 667 (1917); it destroys its cornerstone, the exclusive remedy.

Workers' compensation statutes were a drastic change in the prevailing common law; they were justified constitutionally and philosophically by this Court in the *New York Central* case. For the employee, he gave up his right to a jury trial, but he no longer had to prove negligence to recover the economic replacement of his loss. The employer gave up his defenses of contributory negligence, assumption of risk, and the fellow servant rule, and agreed to pay the economic consequences of the injury irrespective of fault or negligence.

This new system substituted for the "hit or miss" character of court litigation; under workers' compensation every injured employee recovers his economic loss.

In respect to the specific issue before the Court on this petition, that the workers' compensation statute is the sole and exclusive remedy for employment injuries, this Court upheld the constitutionality of workers' compensation originally on the basis that, while the employer paid without regard to fault or negligence, he was relieved "from responsibility for damages measured by common law standards . . . ." *Ibid.*, 243 U.S. 188, 189. This was the "balancing of interests" or the "trade off" which made workers' compensation viable and constitutional.

The Decision below also shows considerable ignorance about the benefit levels of workers' compensation with the statement, "We note that workers' compensation benefits do not compensate workers for their full damages. *See, e.g.*, Fla. Stat. Sec. 440, 15-16 (Compensation capped at 66⅔rds of average wages)." The Opinion seems unaware that workers' compensation benefits are tax-free, and that 66⅔rds of gross taxable earnings on a tax-free basis is very close to the "take home" pay, the actual earnings of employees. Whether this satisfies that court's concept of "full damages" can't be determined, for the Opinion does not define it. But, it is worth noting that the employees get their workers' compensation benefits immediately, without the expense and delay of litigation in court.

Last, the Opinion below fails to appreciate the basic purpose of both federal (the Longshore and Harbor Workers' Act and the Federal Employees Compensation Act) and the state workers' compensation laws, which is to take care of the injured employee and his family immediately, without wasting time investigating liability or defenses to liability. All these statutes, both federal and state, mandate this attention by expressly relieving the employer of having to defend in the courts to pay jury verdicts for

the personal injury involved. This is the sound economic and social policy embodied in workers' compensation statutes. If changed, an employer must be very cautious about making even the first payment to the employee until after a lengthy investigation. The Opinion below casts no light on what will happen to a destitute farm worker in the interim.

The Opinion below will require an employer to pay twice, and permit the employee to recover twice, for the same personal injury. Dual litigation and double recoveries should not be encouraged.

The National Council of Self-Insurers believes these views should be before the Court as it considers the Petition for Certiorari, and moves it be permitted to intervene as *amicus curiae* and file the attached brief instanter.

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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF AMICUS CURIAE THE NATIONAL COUNCIL OF SELF-INSURERS IN SUPPORT OF PETITIONER

The National Council of Self-Insurers respectfully submits this brief as *amicus curiae* in support of the petition for a writ of certiorari.

INTEREST OF THE AMICUS CURIAE

The National Council of Self-Insurers is a voluntary association of employers, many of them multi-state employers, who self-insure their workers' compensation responsibilities, that is, pay these benefits directly to injured employees. It is also a parent organization for 25 state self-insurance associations involved in the workers' compensation problems of each such state.

The National Council is devoted to the proper operation of the workers' compensation systems which exist in every state, as well as in those areas in which federal workers' compensation laws prevail such as the Longshore and Harbor Workers' Act and the Federal Employees Compensation Act. It supports these workers' compensation systems, and desires to assist them in maintaining and retaining their economic and social goals.

STATEMENT

This case presents a severe threat to the social and economic fabric of the workers' compensation laws in both state and federal areas of jurisdiction. Virtually all employers and employees in the United States operate in reliance on these laws and their salutary procedures, benefits and protections. The decision below destroys the foundation of these state and federal workers' compensation laws by authorizing an added personal injury action at common law, to an employee who has already been compensated in accordance with the workers' compensation law.

The National Council of Self-Insurers believes that the principles of workers' compensation are a vital part of the social and economic framework for employment in the United States. The public policy behind such laws is that when an injury occurs, employers should address immediately the medical and economic needs of the injured worker and his family, rather than delay such benefits while investigating liability, or defenses to liability. In return for this immediate attention to the needs of the injured employee, the employer is immune from liabilities based upon fault or negligence and from liabilities assessed by juries, and does not even need to investigate an accident from the point of view of fault or liability.

The new and separate personal injury cause of action authorized by the decision below results from the court's interpretation of an Act of Congress known as the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1854. In the appraisal of *amicus*, it is the first time that a regulatory act of Congress has been held to supersede the exclusive remedy of an applicable workers' compensation statute, state or federal.

There is some variance among the states concerning coverage of agricultural workers by workers' compensation statutes, a variation in coverages which may have affected congressional considerations. But there is no such question in this case; the plaintiffs here are covered and have already received the workers' compensation benefits in accordance with Florida law.

The decision below authorizes an additional cause of action, in fact a double recovery, for the same personal injury already compensated under the workers' compensation laws of Florida. It thus destroys the essential cornerstone of workers' compensation, that an employer pay workers' compensation benefits irrespective of fault or

negligence, without the need to investigate liability issues, and in return is relieved of the responsibility of defending in court or paying damages assessed by a jury under common law principles.

Amicus believes that this important public policy is not merely threatened, but devastated by the decision below.

REASONS FOR GRANTING THE PETITION

I.

THE EXCLUSIVE REMEDY OF WORKERS' COMPENSATION, WITH THE CONCOMITANT RESPONSIBILITY OF THE EMPLOYER TO TAKE IMMEDIATE STEPS TO ASSIST THE WORKER AND HIS FAMILY, WAS THE CORNERSTONE SUPPORTING THE CONSTITUTIONALITY OF WORKERS' COMPENSATION LEGISLATION, AND SHOULD NOT BE ABANDONED.

Workers' compensation statutes represent an historic compromise with our common law tradition. Prior to the enactment of such laws, an employee could recover for an injury only if he proved negligence against his employer. The employer could defend on the ground that he was not negligent, that the employee was contributorily negligent, that the employee had "assumed the risk," or that any negligence was on the part of a fellow servant, not the employer.

Injuries did occur in the course of production of goods and services, and workers and their families dependent upon regular paychecks for existence often received nothing. If they did recover, the litigation delay meant long periods during which the worker and his family received nothing, and often became public charges.

Workers' compensation statutes were designed to bring immediate medical attention and immediate economic sustenance to the worker and his family. The employee would receive these benefits whether or not there was negligence involved in the accident, and the employer would pay without regard to negligence or any other defenses. The "balance of interest" or the "trade-off" was that the employer, being required to pay without regard to fault, and paying currently rather than at the conclusion of lengthy litigation, was immune from common law actions and jury verdicts.

Thus, our society substituted the certainty of payments for economic loss for the uncertain, "hit and miss" character of common law litigation.

Workers' compensation laws were a drastic change from the common law, and raised serious constitutional issues. In 1917, this Court had before it three challenges to the constitutionality of state enacted workers' compensation laws, from New York, from Iowa, and from Washington. *New York Central R. Co. v. White*, 243 U.S. 188, 37 S.Ct. 247, 61 L.Ed. 667; *Hawkins v. Bleakley*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678; and *Mountain Timber Co. v. Washington*, 243 U.S. 219, 37 S.Ct. 260, 61 L.Ed. 685. In each case, this Court upheld the constitutionality of the workers' compensation laws as an exercise of the police power. But, the cornerstone of the constitutional "balancing of interests" was the fact that the employer was relieved "from responsibility for damages measured by common law standards . . ." *New York Central R. Co. v. White*, 343 U.S. 188 at 198.[1]

[1] All states followed this Decision. Citing it, the Illinois Supreme Court stated:

(Footnote continued on following page)

Every state now has a workers' compensation law. The federal government has enacted a workers' compensation law for areas under federal jurisdiction, the Longshore and Harbor Workers' Act, and for federal employees, the Federal Employment Compensation Act. Each statute contains the clear expression that workers' compensation is the exclusive remedy for an employee's injury, and the employer is immune from all other law suits and damages assessed by juries for that same personal injury.

Professor Larson traces this development, and in his treatise states:

> "Once a workers' compensation act has become applicable . . . , it affords the exclusive remedy for the injury by the employee or his dependents against the employer and the insurance company. This is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts." Section 65-10, Vol. 2A, *Larson's Workmen's Compensation Law.*

The decision by the Eleventh Circuit Court of Appeals below does not recognize or discuss the violence which it does to the long-standing economic and social fabric of workers' compensation in the United States. The Opinion below is a cavalier abandonment of the philosophical and

---

[1] *continued*

> "The scheme of the act is so wide a departure from common law standards respecting responsibility of employer to employee that doubts naturally arise respecting its constitutional validity . . . [but on the balance of the interests] the legislation relieves the employer from responsibility for damages measured by common law standards . . . payable in cases where he is at fault." *Grand Trunk Western Ry. v. Industrial Commission*, 291 Ill. 167, 175, 125 N.E. 748 (1920).

constitutional parameters of workers' compensation expressed by the holdings of this Court in 1917 in the cases cited above, principles which remain current and viable today in the everyday life of employment in the United States.

II.

OUR COURTS, INCLUDING THIS COURT, HAVE CONSISTENTLY REFUSED TO CONSTRUE VARIOUS REGULATORY ACTS OF CONGRESS AS ABOLISHING THE EXCLUSIVE REMEDY OF WORKERS' COMPENSATION LAWS.

Attempts to evade the exclusive remedy of workers' compensation laws are numerous. But, our courts, including this Court, have consistently refused to permit its erosion.

An attempt to evade the workers' compensation law by suing under the federal Tort Claims Act was rejected in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966). In accord, *Schmid v. United States*, 645 F.Supp. 486 (E.D. Pa. 1986).

An attempt to use the RICO statute to evade workers' compensation exclusive jurisdiction was rejected in *Tellis v. U.S. Fidelity & Guaranty Co.*, 625 F.Supp. 92 (N.D. Ill. 1985), *affirmed*, 805 F.2d 741 (7th Cir. 1986).

An attempt to use federal admiralty law and the regulatory features of the Public Vessels Act to evade the exclusive remedy of workers' compensation was rejected. *Johansen v. United States*, 343 U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051, *reh'g denied*, 344 U.S. 848, 73 S.Ct. 5, 97 L.Ed. 660 (1952); *Sample v. Johnson*, 771 F.2d 1335 (9th Cir. 1985), *cert. denied*, 106 S.Ct. 1206, 89 L.Ed. 319 (1986).

Even when couched as an *in rem* action against the ship, rather than an *in persona* action against the employer, our courts have rejected such attempts; the Long-

shore and Harbor Workers' Act was held to be the exclusive remedy. *Bynum v. S. S. Mormacteal*, 188 F.Supp. 763 (E.D. Pa. 1960). These federal workers' compensation statutes (Longshore and Harbor Workers' Act and the Federal Employees Compensation Act) are the same as the state statutes in declaring that workers' compensation is the exclusive remedy.

If the decision below is upheld, that this Act of Congress overrides Florida's exclusive remedy statute, it follows that the exclusive remedy of the federal laws, the Longshore and Harbor Workers' Act and the Federal Employees Compensation Act, becomes meaningless, too.

These regulatory acts of Congress were not construed to invade the exclusive remedy of workers' compensation laws. The statutes involved created causes of action far more definitively than does the AWPA, but did not invade the exclusive remedy. The construction by the Eleventh Circuit in this case is in error, inconsistent with the construction given by the courts in other cases of alleged conflict between acts of Congress and workers' compensation statutes.

III.

THE OPINION BELOW ADMITS IT ALLOWS A DOUBLE RECOVERY FOR THE SAME PERSONAL INJURY ON THE IMPLIED BUT ERRONEOUS BASIS THAT WORKERS' COMPENSATION BENEFITS ARE INADEQUATE.

Near the end of this opinion, the court below addresses the problem of double recovery as follows:

> "Appellee finally argues that it would be contrary to Congressional intent and unfair to allow double recovery under workers' compensation laws and a suit for actual or statutory damages under the act. We note that workers' compensation benefits do not compensate workers for their full actual damages, *see, e.g.*, Fla. Stat. Sec. 440.15-.16. (Compensation capped at 66⅔% of average wage.)"

This argument was specifically rejected by this Court in *United States v. Demko*, 385 U.S. 149, 87 S.Ct. 382, 17 L.Ed.2d 258 (1966). In addition, it is erroneous.

The opinion below fails to note that workers' compensation benefits are tax-free, and that tax-fee benefits of 66⅔% of gross wages are very close to actual "take home" pay. Thus, the payment of workers' compensation benefits on a tax-free basis, plus all medical expenses in full, may very well be the "full actual damages" desired by the court below. Since the opinion denigrates workers' compensation benefits only on this erroneous basis, and gives no other definition of "full actual damages," *amicus* submits that workers' compensation may already have paid the "full actual damages."

Perhaps workers' compensation has paid even more than "full actual damages" since the injured employee gets the money and his medical bills paid immediately, when he needs it, without the delay and expense of common law litigation. In terms of economic loss, workers' compensation often pays "full actual damages" more adequately than court litigation does—as well as paying in every case of employee injury, irrespective of liability.

CONCLUSION

The opinion below shows a lack of understanding of the benefits paid under workers' compensation laws, both state and federal, in addition to a lack of appreciation of

the economic, philosophic and constitutional bases of workers' compensation set forth in Part I above, and its importance in the employment life of the United States.

For these reasons, the National Council of Self-Insurers as *amicus curiae*, urges this Court to grant the Petition for Certiorari.

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STATEMENT OF THE CASE

The plight of migrant farmworkers in America was recognized by Congress decades ago. This case involves a federal private right of action — the centerpiece of the legislation Congress enacted to redress the persistent problems of that uniquely vulnerable and perennially exploited group.

A. The Legislative History of the Farmworkers' Federal Private Right of Action

1. *The Farm Labor Contractors Registration Act of 1963*

In 1963, Congress concluded that the "plight of the migrant laborer in this country is an inexcusable and cancerous sore in the body politic." 110 Cong. Rec. 19,896 (1964) (statement of Rep. Bennett). Their "transportation and living conditions are far below the general standard of living — are indeed inhuman, the very worst conditions of human life in this country, totally unacceptable for human beings." *Id.* at 19,894 (statement of Rep. Powell). At the same time, it was noted that few of the "protective measures of federal law enjoyed by other workers are extended to migratory laborers." *Id.* at 19,896 (statement of Rep. Ryan). Secretary of Labor Willard Wirtz testified that neither state nor federal law safeguarded migrant workers: "It is an anomaly that the workers who stand in the greatest need of social and economic protection are the ones who have been denied such protection." *Migratory Labor Bills: Hearings on S. 521 and Other Bills Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 88th Cong., 1st Sess. 29 (1963).

The Farm Labor Contractor Registration Act, Pub.L.No.88-582, 78 Stat. 920 (1963) ("FLCRA"), was enacted to stem the tide of "exploitation and abuse" of migrant workers at the hands of the farm labor contractors or crew leaders who managed and transported the workers to provide labor for farmers and orchard owners. S.Rep. No.202, 88th Cong., 1st Sess. 2 (1963). Such farm labor contractors were required to meet ex-

tensive qualification standards before the Department of Labor would register them and allow them to do business. One of the principal risks to migrant workers was transportation to worksites in unsafe vehicles operated by uninsured contractors. No farm labor contractor could obtain a certificate of registration until he had "give[n] the Secretary proof of his ability to respond in damages for liability arising in connection with vehicles used to transport migrant workers. . . . Insurance must be in the amounts required by State law, and in no event less than $5,000 for bodily injuries to or death of one person" and $20,000 for injury or death of all persons in a single accident. *Id.* at 6. The federal standards were intended to set a floor for migrant worker protections; the states remained free to enforce more stringent safeguards: "This bill makes it clear that this act will not excuse compliance with any State law or regulation, but rather is intended to supplement State action." *Id.* at 7. *See also id.* at 15 (text of FLCRA); H.R.Rep. No.358, 88th Cong., 1st Sess. 5 (1963).

2. *The 1974 Amendments to FLCRA*

In 1974, Congress found that the Department of Labor's administration of FLCRA was an abject failure: "It has become clear that the provisions of the Act cannot be effectively enforced. Noncompliance by those whose activities the Act was intended to regulate has become the rule rather than the exception. . . . It is quite evident that the Act in its present form provides no real deterrent to violations." S.Rep. No. 1206, 93d Cong., 2d Sess. 3 (1974) ("1974 S.Rep.").[1]

Congress identified the lack of a private cause of action as a primary cause of FLCRA's failure. 1974 S.Rep. at 3; H.R.Rep. No. 1493, 93d Cong., 2d Sess. 1 (1974) ("1974 H.R.Rep."). Accordingly, one of the "major purpose[s]" of the 1974 Amend-

[1] A 1973 Labor Department study found that two-thirds of labor contractors had never registered, and that 73% were violating FLCRA's worker protections. H.R.Rep. No.1493, 93d Cong., 2d Sess. 6 (1974). In the entire decade since FLCRA's enactment, the Department of Labor had referred only four cases to the Justice Department for prosecution, and only one contractor had been tried and convicted. 1974 S.Rep. at 3.

ments to FLCRA was to "creat[e] a civil remedy for persons aggrieved by violations of the act." 1974 H.R.Rep. at 1. Congress deemed "an unfettered federal civil remedy" to be "crucial to the effective enforcement of existing law," *id.* at 7, and Congress therefore consciously "patterned" FLCRA's private cause of action "after other federal statutes in the field of civil rights." *Farm Labor Contractor Registration Act Amendments of 1973: Hearings on H.R. 7597 Before the Subcomm. on Agricultural Labor of the House Comm. on Education and Labor*, 93d Cong., 1st Sess. 112 (1973) (statement of FLCRA co-sponsor Rep. Ford).[2] The federal district courts were given jurisdiction over complaints of those aggrieved by violations of FLCRA without regard to the amount in controvery or the citizenship of the parties or the exhaustion of administrative remedies, and those courts were authorized to appoint attorneys for the complainants. 1974 H.R.Rep. at 11, 20. Upon a finding of an intentional violation of any provision of FLCRA, the court could "award damages up to and including an amount equal to the amount of actual damages, or $500 for each violation, or other equitable relief." *Id.*

The American Farm Bureau Federation, one of the *amici* now urging reversal of the judgment below, testified in opposition to the private right of action, urging that migrant workers be required to "seek administrative relief before filing a court action." *Farm Labor Contractor Registration Act Amendments, 1974: Hearings on S. 2070 and S. 3202 Before the Subcomm. on Employment, Poverty and Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 93d Cong., 2d Sess. 156 (1974) (statement of C.H. Fields, American Farm Bureau Federation) ("*1974 Senate Hearings*"). Congress rejected this plea, expressly providing that exhaustion of any alternative administrative remedies was unnecessary. 1974 S.Rep. at 9.

[2] In addition to providing much-needed compensation to injured farmworkers, FLCRA contained an anti-discrimination provision, forbidding intimidation, coercion or retaliation against farmworkers who asserted their rights under the Act by filing complaints or instituting private causes of action against someone alleged to have violated FLCRA. 1974 H.R.Rep. at 11. The current, substantially unchanged version of this provision is codified at 29 U.S.C. § 1855.

The most dramatic testimony supporting the need for such an "unfettered" federal remedy concerned a 1974 bus crash in Blythe, California, in which 19 migrant workers were killed and another 28 were maimed and injured. *1974 Senate Hearings* at 47-48 (statement of Daniel Boone, United Farmworkers Union). These workers were covered by California's workers' compensation program, *1974 Senate Hearings* at 182 (statement of Guinn Sinclair, Farm Labor Contractors Assoc.), but Congress was not convinced that benefit levels were adequate. Despite pleas from agricultural employers that Congress grant an exemption from FLCRA for those covered by California's workers' compensation scheme, and warnings that otherwise some state laws might be invalidated by FLCRA, *id.* at 180-81, Congress declined to legislate any such escape from FLCRA's insurance standards or its private cause of action.

3. *The Rejected 1978 Proposed Amendment to FLCRA*

In 1978, Congress heard complaints from agricultural employers and labor contractors that they were being forced to pay double insurance premiums — one premium for state workers' compensation for their agricultural workers and another for vehicle insurance required by FLCRA. Normally, an employer's vehicle liability policy carried a clause designed to make its coverage "dovetail" with — rather than overlap — state workers' compensation insurance. *Farm Labor Contractor Registration Act: Hearings on H.R. 8232 and Other Bills Before the Subcomm. on Economic Opportunity of the House Comm. on Education and Labor*, 95th Cong., 2d Sess. 34 (1978) ("*1978 House Hearings*") (statement of Rep. Ireland). Such a clause excluded coverage for injuries to employees transported in the vehicle and made the vehicle policy "consistent with the exclusive liability provisions of state workmen's compensation laws." *Id.* But the Department of Labor deemed the benefits available under even the nation's most generous workers' compensation regimes, such as California's, to be an inadequate substitute for federal remedies and insurance requirements. *1978 House Hearings* at 10 (letter of Warren Landis, Chief of the Employment Standards Administration, Department of Labor). For this reason, the Department directed that the usual employee exclusion clause be stricken from the vehicle insurance policies that FLCRA required labor contractors to obtain. A labor contractor was thus required to insure against injury to his migrant passengers even if they were already covered by workers' compensation. *Id.* at 34 (statement of Rep. Ireland); *see also id.* at 107 (statement of Roderick Shaw, Citrus Industry Council).

The agricultural industry and its insurance carriers were "afraid that someone might take the position that FLCRA preempted the exclusive remedy provision of state workmen's compensation law and allows double dipping, double recovery. That means after paying out [benefits] for permanent total injury under workmen's compensation, they might in turn get hit for some rather remarkable verdict against the same employer on the same injury in tort" under FLCRA. *1978 House Hearings* at 107 (statement of Roderick Shaw, Citrus Industry Council).

In response, Representative Ireland of Florida proposed an amendment to FLCRA under which a farm labor contractor who carried state workers' compensation insurance could invoke the exclusivity of the state workers' compensation scheme as a defense against recovery for death or bodily injury under the federal statute. H.R. 10631, 95th Cong., 2d Sess. (1978) ("the Ireland Amendment").[3] Representative Ireland explained that his amendment was designed to eliminate the possibility that federal "courts might conceivably allow 'double dipping' by agricultural workers," who might attempt to collect both from state workmen's compensation and from the additional

[3] The relevant portion of H.R. 10631 provided that, if an applicant for farm labor contractor registration has "filed proof satisfactory to the Secretary of the existence of a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment in connection with his business, activities, or operations as a farm labor contractor, the policy of vehicle liability insurance provided by him *shall conform to the exclusive remedy provisions of the State workmen's compensation law*." *1978 House Hearings* at 4 (emphasis added).

vehicle liability policy that the contractor carried to cover liability under FLCRA's private right of action. *Id.* at 34 (statement of Rep. Ireland).[4]

The Department of Labor opposed the Ireland Amendment, maintaining its position that the level of benefits available under workers' compensation regimes was too low to warrant making them exclusive of recovery under federal law. Represenative Causey summarized the testimony of the Labor Department witnesses: "they were opposed to that section [the Ireland Amendment] on the ground that state workmen's compensation laws, in some cases, do not provide a level of compensation equal to what the Act requires," *1978 House Hearings* at 175.[5] Other witnesses likewise opposed the Ireland Amendment because it would relegate injured farmworkers to the inadequate compensation available from state workers' compensation programs. *1978 House Hearings* at 133 (statement of Burton Fretz, Migrant Legal Action Program).[6]

[4] "The proposed amendment makes clear Congress' intent that the vehicle liability insurance required by the Act should dovetail with rather than be in addition to workmen's compensation benefits," *1978 House Hearings* at 34 (statement of Rep. Ireland).

[5] Donald Elisburg, the Assistant Secretary of Labor, stated that "[t]he benefit levels under the workmen's compensation coverage, to the extent there is any, may be well below the protections that would be provided" by federal law. *1978 House Hearings* at 67. *See also id.* at 66 (statement of Herbert Cohen, Assistant Administrator, Wage and Hour Division) ("we are now satisfied that none of the State workers' compensation laws really fully satisfy the insurance provisions as they now stand in" FLCRA).

The Department of Labor offered additional reasons why workers' compensation benefits are an inadequate substitute for recovery under a federal right of action: workers' compensation coverage varies from state to state and protection for migrant workers is therefore uncertain; there is no liability unless the injury is work-related and definitions of that status vary enormously; and workers' compensation, unlike FLCRA, fails to protect either non-employee third parties or the families of migrant workers from injuries caused by labor contractors' vehicles. *1978 House Hearings* at 8 (letter of Donald Elisburg, Assistant Secretary of Labor). Warren Landis, Chief of the Employment Standards Administration, informed Congress that it would be "administratively infeasible to incorporate such varied and unclear State laws in meeting the Federal statutory requirements." *1978 House Hearings* at 10.

[6] There was also testimony in opposition to the Ireland Amendment's self-executing nature, which would have operated without federal administrative oversight. One witness expressed alarm that the bill simply provided that employer insurance policies "*conform to the exclusive remedy provisions of state law*," rather than delegating power to the Secretary of Labor "to waive existing insurance requirements" if a particular level of workers' compensation benefits was assured. *1978 House Hearings* at 133 (statement of Burton Fretz) (emphasis in original).

A spokesman for the Florida citrus industry, testifying in favor of the Ireland Amendment, envisioned two ways of eliminating the possibility of simultaneous recovery by an injured migrant worker under both workmen's compensation and FLCRA: (1) enactment of the Ireland Amendment, or (2) the insertion by Congress of "a statement in the record of this committee report saying quite convincingly that there is no intention for there to be any federally preemptive [sic] of the exclusive [remedy] provision of state workmen's compensation . . . ." *Id.* at 108 (statement of Roderick Shaw, Citrus Industry Council). Congress declined to pursue either path: the Ireland Amendment was rejected, and the legislative record is devoid of any expression of congressional intent to subject recovery under FLCRA's private cause of action to the exclusivity provisions of state workmen's compensation laws.

4. *The Migrant and Seasonal Agricultural Worker Protection Act of 1983*

The problem which emerged in the eight years following the 1974 FLCRA amendments arose neither from the specific worker protections nor from the mechanism for enforcing them. Rather it concerned uncertainties about how FLCRA applied to fixed-situs employers (such as farmers, orchard owners and food processors) as distinguished from the more transient traditional crew leaders. The 1974 Amendments had broadened the definition of "farm labor contractor" to include not only traditional transient crew leaders but also large numbers of fixed-situs employers. This created two related problems. First, the fixed-situs employers bitterly resented the bureaucratic burdens of registering as farm labor contractors and being fingerprinted "as if they were crewleaders with no fixed addresses or financial integrity." *Hearing on the Migrant and Seasonal Agricultural Worker Protection Act: Hearing on H.R.7102*

Before the Subcomm. on Labor Standards of the House Comm. on Education and Labor, 97th Cong., 2d Sess. 44 (1982) (statement of Robert Collyer, Deputy Under Secretary of Labor) ("*1982 House Hearing*"). *See also* H.R.Rep. No. 885, 97th Cong., 2d Sess. 3-4 (1982) ("1982 H.R.Rep."). Second, the controversy over registration of fixed-situs employers caused Labor Department enforcement of FLCRA to become bogged down in the pursuit of technical registration violations against fixed-situs employers and in litigation over the breadth of the definition of "farm labor contractor." 1982 H.R.Rep. at 2; *1982 House Hearing* at 50 (statement of Robert Collyer, Deputy Under Secretary of Labor).[7] Migrant worker advocates and agricultural employer representatives alike lambasted the Department of Labor for squandering its enforcement resources on technical registration violations that did not threaten significant harm to migrant workers.[8]

To redress these problems, Congress enacted the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L.No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. §§ 1801-1872) ("AWPA"). Although AWPA repealed FLCRA in its entirety, *see* 1982 H.R.Rep. at 34, in most respects the statute

[7] In both the House committee report and the Labor Department's testimony, all of the examples offered to illustrate FLCRA's defects relate either to (1) controversy over which employers were required to register as labor contractors or (2) inadequate enforcement of FLCRA's substantive protections of migrant workers by a Labor Department preoccupied with registration controversies. 1982 H.R.Rep. at 3-4; *1982 House Hearing* at 44-45 (statement of Robert Collyer).

[8] The National Council of Agricultural Employers, one of petitioner's *amici* here, testified that "[c]ountless citations have been issued . . . and law suits filed over technical violations, almost none of which dealt with actual 'damage' to agricultural workers." *1982 House Hearing* at 58 (statement of Perry Ellsworth). Farmworker advocates complained that the Department "has focused on minor violations of the law instead of on workers whose rights under FLCRA have been seriously violated. The relief which the Department has obtained has rarely compensated injured farmworkers, or caused those responsible to bring their activities into compliance with the law." *Id.* at 63 (statement of Garry Bryant, formerly of the Migrant Legal Action Program). *See also* 128 Cong.Rec. 24,091 (1982) (statement of Sen. Hatch, sponsor of the reform bill). Violations of registration requirements must not be confused with violations of the record-keeping, disclosure, housing and transportation standards that aim to prevent injury to (or exploitaton of) farmworkers and that are, therefore, the very heart of the federal program.

was simply renamed and re-enacted.[9] The only sense in which AWPA took a "completely new approach" to the farmworker problem, 1982 H.R. Rep. at 3, was in abandoning FLCRA's attempt to police all conduct toward migrant or seasonal farmworkers through the single locus of the often transient crew leader (and FLCRA's consequent tendency to force all those who make use of such labor into that single, ill-fitting mold of "farm labor contractor"). Thus, AWPA reclassified fixed-situs employers as "agricultural employers" or "agricultural associations" and made them directly responsible for compliance with the Act's substantive worker protections, while liberating such employers from the indignities and bureaucratic burdens of registering as transient "farm labor contractors." 1982 H.R. Rep. at 5-9. AWPA's substantive safeguards of migrant worker safety and rights are virtually identical to those under FLCRA.

In re-enacting FLCRA's private right of action in AWPA, 29 U.S.C. § 1854, Congress preserved the special jurisdictional status of the cause of action (no amount in controversy requirement, no citizenship or diversity requirements, no exhaustion of any administrative remedies), its authorization for court-appointed plaintiff attorneys, and its provision for awards of full "actual damages," *see* § 1854 (a), (b) & (c)(1), while making clear the new congressional enforcement priorities. Senator Hatch, who introduced AWPA in the Senate, explained:

> Currently, FLCRA exposes employers to substantial monetary awards for highly technical violations, especially those related to registration status, when there may be very little damages. Where an intentional violation of the act has been committed, the

[9] Hence the Department of Labor characterized AWPA as merely a "revised farm labor statute" aimed at "clarifying the current statute." *1982 House Hearing* at 49, 50 (statement of Robert Collyer). The Courts of Appeals have concurred and uniformly looked to FLCRA as part of AWPA's legislative history. *See, e.g., Bresgal* v. *Brock*, 843 F.2d 1163, 1165 (9th Cir. 1988); *Bueno* v. *Mattner*, 829 F.2d 1380 (6th Cir. 1987), *cert. denied*, 108 S.Ct. 1994 (1988); *Almendarez* v. *Barrett-Fisher Co.*, 762 F.2d 1275, 1280 n.2 (5th Cir. 1985).

> bill would allow courts to award up to $500 per plaintiff, per violation, as statutory damages in a private lawsuit with an upper limit of $500,000 for a class action. There is no limit on the amount of actual damages that can be awarded by a court.

128 Cong.Rec. 32,463 (1982). *See also 1982 House Hearing* at 49 (statement of Robert Collyer, Deputy Under Secretary of Labor) ("It is our basic intent to . . . retain[ ] full access to the federal courts by injured private parties . . . [T]here is no limit on the amount of actual damages that can be awarded by a court."); 1982 H.R.Rep. at 21 (same). Multiple infractions of a single provision of AWPA or a regulation thereunder constitute but a single violation for purposes of determining statutory damages, § 1854(c)(1)(A), but, as Senator Hatch emphasized, "I want to make absolutely clear, however, that as I have stated earlier, *full actual damages would be awarded in every case*." 128 Cong.Rec. 32,463 (1982) (emphasis added).

This private right of action was re-enacted in the face of vigorous protests by farm and orchard employers that imposing liability under § 1854 was "harsh[ ]," "oppressive[ ]," and "even more objectionable" than subjecting such employers to civil and criminal penalties administered by the Department of Labor. *1982 House Hearing* at 176 (statement of Russell Williams, President, Agricultural Producers). Congress overruled these objections and made § 1854 the centerpiece of AWPA's enforcement regime. As AWPA's co-sponsor in the House explained:

> It has long been apparent that neither volunteerism on the part of agribusiness nor the puny enforcement efforts of the Department of Labor can be expected to make a significant difference in the working conditions of farmworkers. Like the FLCRA, the AWPA provides for a private right of action and holds out the prospect of large damage awards against agricultural employers who mistreat their workers. This, I

> am sure, will prove to be the most important deterrent against the continued abuse of migrant and seasonal farmworkers. As budget cuts undermine the Federal Government's ability to enforce the law, farmworkers will depend increasingly on the private bar and legal services organizations to insure that violators are punished and that they are made whole for their losses and suffering.

128 Cong.Rec. H10456 (daily ed. Dec. 20, 1982) (statement of Rep. Ford).

In order to guarantee that injured workers would not be left entirely in the lurch by judgment-proof labor contractors or farm employers, Congress mandated under Title IV of AWPA (codified at 29 U.S.C. § 1841(b)(1)(C)) that vehicles used to transport farmworkers be covered by a level of insurance in "at least the amount currently required for common carriers under part II of the Interstate Commerce Act." 1982 H.R.Rep. at 20. However, in those situations in which workers are "covered by State workers' compensation no additional insurance for damages to persons need be obtained." *Id*. This proviso addresses solely the level of liability insurance that farm employers are legally required to carry by Title IV of AWPA; it does not bear on whatever level of additional coverage may be advisable to insure employers against liability under the private cause of action created by Title V. On the very next page, where the House Report turns to its explication of AWPA's private civil remedy, Congress makes plain that a federal court may award an injured worker "an amount equal to his actual damages where there is no dollar limit . . . . The Committee's intent is . . . to insure full access to the Federal courts by injured private parties." 1982 H.R.Rep. at 21.

5. *Department of Labor Regulation 500.122(b)*

The Department of Labor received harsh criticism from both Congress and farm employer representatives for its sloth in promulgating regulations to implement FLCRA. *See, e.g.*,

Oversight Hearings on the Farm Labor Contractor Registration Act: Hearings Before the Subcomm. on Agricultural Labor of the House Comm. on Education and Labor, 94th Cong., 1st Sess. 10 (1975) (statement of Rep. McFall); *id.* at 81 (letter of the National Council of Agricultural Employers) ("*1975 Oversight Hearings*"). As late as 1978, four years after FLCRA's enactment, the Department confessed that it had still not issued an interpretive bulletin to inform farm contractors and employers of their duties under the law. *1978 House Hearings* at 67 (statement of Donald Elisburg, Assistant Secretary of Labor).

To preclude a similar performance under AWPA, Congress expressly directed the Department of Labor to promulgate appropriate implementing regulations no later than the effective date of the statute. 29 U.S.C. § 1841(d). AWPA became effective on April 14, 1983, and on April 12, 1983 the Department released interim regulations — dispensing, in its haste, with the practice of issuing proposed regulations. Comments on the immediately effective interim regulations had to be received within 30 days. *See* 48 Fed. Reg. 15800 (April 12, 1983).

Among the more than two hundred regulations promulgated under AWPA on April 12, 1983, was 29 C.F.R. § 500.122, entitled "Adjustments in insurance requirements when workers' compensation coverage is provided under State law," and issued, as that title indicates, to implement 29 U.S.C. § 1841(c) pursuant to the Secretary's authority under § 1841(d). *See* Appendix to Petition for Certiorari ("CPA") 32a-33a. Sandwiched between paragraphs actually dealing, as the title of the regulation represented, with adjustments in insurance coverage, the Department of Labor inserted a proviso purporting to strip the federal courts of the remedial jurisdiction granted by § 1854, AWPA's private cause of action:

> Where a State workers' compensation law is applicable and coverage is provided for a[n] . . . agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. § 500.122(b). CPA 36a. The Department provided no clue as to where in the federal code it found authority to withdraw the federal judicial remedies expressly granted to litigants by Congress in a private cause of action.[10] Since the Department of Labor has declined to defend its regulation by an appearance before this Court, the statutory authorization (if any) for the Department's assertion of legislative power remains a mystery.

B. The Proceedings Below

On May 8, 1985, the respondents, ten farmworkers employed by petitioner Adams Fruit Company, were injured in Florida when the overloaded Adams Fruit van in which they were traveling suffered a tire blowout, crashed and overturned. Many of the respondents are permanently disabled as a result of the accident and unable to work. *See* Complaint, Joint Appendix ("JA") 2. Respondents alleged that their injuries were attributable in part to or were exacerbated by several intentional violations of AWPA safety standards. *Id.* at 2-3, 7-9.

Respondents applied for and received payments for medical treatment and for lost wages pursuant to Florida's Workers' Compensation Act.[11] Respondents then filed this suit under 29 U.S.C. § 1854, seeking actual or statutory damages and an order enjoining Adams Fruit from future violations of AWPA's vehicle safety standards. JA 9.

The District Court granted summary judgment for defendant on respondents' claims for statutory damages, actual damages

[10] It is impossible to know whether anyone noticed this remarkable subsection lurking in the interim regulations or whether the Department of Labor received any comments objecting to it, because the comments on § 500.122(b) have, according to the Department, been lost. The Director of Farm Labor Programs in the Department's Wage and Hour Division informed counsel for respondents by telephone that the comments appear to have been lost in the shuffle during the several moves the Division has made since 1983.

[11] As petitioner notes, Petitioner's Brief ("PB") 19 n.5, several of the respondents obtained relief against the manufacturer of the defective tire that occasioned the accident. Pursuant to Fla.Stat. § 440.39(3)(a), they have been required to reimburse the workers' compensation insurance carrier from their tort suit recovery for all benefits received under that state program.

and injunctive relief, on the ground that all such relief, both legal and equitable, is barred by the exclusive remedy provision of Florida's Workers' Compensation Act, Fla. Stat. § 440.11, in conjunction with 29 U.S.C. § 1841(c)(1). CPA 16a-19a. The United States Court of Appeals for the Eleventh Circuit reversed and remanded for trial. This Court granted a writ of certiorari.

SUMMARY OF ARGUMENT

Although this might appear to be a case about federal pre-emption, it differs from most pre-emption cases in one striking respect: the question presented is *not* whether a purportedly controlling provision of state law should be disregarded because Congress meant to occupy the field. The question posed here is, rather, whether an expressly controlling provision of *federal* law — one regulating the jurisdiction of the federal courts — should be disregarded in view of a state's internal division of authority, over a related subject, between its courts and its agencies.

That controlling federal provision is a private cause of action explicitly created by Congress in 29 U.S.C. § 1854 for migrant and seasonal farmworkers and their families. Nothing in this law's text or its history remotely supports petitioner's novel argument that the federal jurisdiction conferred thereby to remedy intentional violations of federal safety standards may be ousted — in a truly unprecedented form of *reverse pre-emption* engineered not by Congress but by a Labor Department regulation — on the basis of a state's decision to replace that state's *own* court-enforced tort remedies for injured migrant workers with an administrative regime of no-fault workers' compensation.

This Court's precedents make clear that no federal "incorporation" of state law jurisdiction-stripping provisions, escalating them into provisions purporting to oust *federal* courts of remedial power, is to be presumed from Congress' silence.

Applying any such presumption to a state workers' compensation scheme would be uniquely inappropriate in construing an

Act of Congress that elsewhere (1) expressly relieves agricultural employers covered by such a state scheme from the *duty to purchase additional insurance* to cover farmworker transportation (§ 1841(c)) while saying *nothing at all* about exempting such employers from the private suits created by the Act; but (2) does expressly exempt from all suits one category of potential defendants — namely, "labor organizations" as "defined under applicable State labor relations law" (§ 1803(a)(3)(B)).

The fact that Congress explicitly provided that this protective federal statute "is intended to *supplement* state law" rather than to "excuse any person from compliance with appropriate State law" (§ 1871) (emphasis added) undermines petitioner's claim that Congress wanted compliance with state law to excuse a federal defendant from full accountability to federal standards in a federal suit expressly authorized by the Act. Clearly, a directive by Congress that its statute sets a protective *floor* rather than a pre-emptive *ceiling* cannot be read to suspend the normal operation of the Constitution's Supremacy Clause, which precludes giving state law an effect that directly conflicts with an applicable federal statute.

Remarkably, over a decade ago Congress *specifically rejected* the precise workers' compensation exclusivity defense that petitioner would have this Court engraft onto Congress' statute, either on the Court's own authority or out of deference to a six-year-old Department of Labor regulation that the United States pointedly *has not defended* in this litigation.

When Congress, unsatisfied with Labor's enforcement of federal safety requirements for the transportation and housing of migrant workers and their families, created a private cause of action for such individuals (§ 1854) and endowed the Department of Labor with authority to prescribe standards for vehicle safety and for vehicle insurance coverage (§ 1841(d)), it cannot be said to have delegated to the Department the quintessentially lawmaking power to enact a provision (§ 500.122(b)) that would eliminate the very cause of action Congress had legislated, remitting migrants to the very schemes of state workers' compensation that Congress had examined and found wanting.

It is hardly surprising that neither the Department of Labor nor the Department of Justice joins petitioner in urging this

Court to give effect to this free-floating executive usurpation of national legislative power. Where, as here, Congress has left no gap for the Executive Branch to fill and no ambiguity for the Executive to resolve, the separation of powers leaves no room for "deference" to a departmentally crafted court-stripping measure of the sort petitioner (but, notably, not even the State of Florida itself) attributes to Florida law in this case.

ARGUMENT

I. NOTHING IN FEDERAL LAW PERMITS THE DISMISSAL OF § 1854's CONGRESSIONALLY CREATED PRIVATE CAUSE OF ACTION ON THE BASIS OF A STATE'S DECISION TO DISPLACE ITS OWN COMMON LAW TORT REMEDIES WITH A REGIME OF WORKERS' COMPENSATION.

A. The Language And Legislative History Of § 1854 Mandate Rejection Of Petitioner's Proposed Workers' Compensation Defense To Private Civil Liability Under AWPA.

Since 29 U.S.C. § 1854 is the place where Congress sets forth the private right of action under which respondents have sued, an understanding of § 1854 is essential to this case — although petitioner and its *amici* resolutely ignore it.

Section 1854 creates a private right of action for "[a]ny person aggrieved by a violation of [AWPA]," § 1854(a), and specifies the available relief in exacting detail. There is a cap of $500 per plaintiff per violation for awards of statutory damages, a cap of $500,000 for total statutory damages in a class action, and a limit on cumulating multiple infractions of a single statutory provision for the purposes of awarding statutory damages. § 1854(c)(1)(A) & (B). In determining the amount of damages, the district court is expressly authorized "to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation." § 1854(c)(2). But there is not a single word even remotely suggesting that state workers' compensation laws impose an additional cap on damages or otherwise affect the award of relief under AWPA in any way. Indeed, the statute negates such an interpretation by expressly providing that the court "may award damages up to and including an amount equal to the amount of actual damages," § 1854 (c)(1).

The legislative history of § 1854 — which petitioner and its *amici* do not pause to discuss — confirms that Congress did not contemplate any limits on damages under AWPA other than those delineated in § 1854. *See supra* pp. 3-4, 9-11. Senator Hatch, who introduced the bill, went out of his way to reiterate that "*full actual damages would be awarded in every case*." 128 Cong.Rec. 32,463 (1982) (emphasis added). AWPA's private right of action was enacted in the face of stiff opposition from agricultural employers, *see supra* p. 10, because of Congress' conviction that only "the prospect of large damage awards against agricultural employers" under § 1854 could achieve the twin goals of punishing violations of AWPA and ensuring that farmworkers "are made whole for their losses and suffering." 128 Cong.Rec. H10456 (daily ed. Dec. 20, 1982) (statement of co-sponsor Rep. Ford).

B. There Is No Support In The Text Or History Of AWPA For Petitioner's Argument That Congress, By Its Silence On The Issue, Incorporated The Whole of State Workers' Compensation Law Into AWPA.

1. *State workers' compensation law is irrelevant to this federal cause of action.*

Petitioner contends that, despite the plain language of § 1854, respondents are barred from suing for damages for bodily injury under AWPA by virtue of the exclusive remedy provision of the Florida Worker' Compensation Statute, Fla.Stat. § 440.11 (CPA 37a). On its face, that provision has no bearing on this federal lawsuit. The decision of the Florida legislature to displace *its own* state law tort remedies for injured employees with a regime of no-fault workers' compensation does not even purport to affect the availability of remedies

provided by *other sovereigns or other jurisdictions* for the same injuries covered by the Florida law.[12] In general, such an exclusivity provision, whether in a federal or state statute, does not bar additional recovery for the same injury under the tort remedies or workers' compensation scheme of another jurisdiction. *See Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 722 n.4 (1980) (noting that this Court has never construed the exclusive remedy provision of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 905(a), "to

[12] Unlike *United States* v. *Demko*, 385 U.S. 149 (1966), on which petitioner relies so heavily, PB 6, 18, this case involves no need to reconcile two competing compensation schemes of a single jurisdiction. *Demko* held that 18 U.S.C. § 4126 was the exclusive means of recovery for an injured federal prisoner who brought suit under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346, after having received benefits under a § 4126 claim. Noting that "compensation laws are practically always thought of as substitutes for . . . common-law tort actions," the *Demko* Court held that Congress' own tailor-made compensation scheme (§ 4126) displaced Congress' general incorporation of state common law torts (FTCA): "where 'the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect.'" 385 U.S. at 151 (citation omitted).

In any event, it is plain that Congress meant AWPA, unlike the FTCA, to exist alongside other remedial schemes, for Congress expressly enacted AWPA "to supplement State law." 29 U.S.C. § 1871. CPA 35a. Nothing in the text or legislative history of the FTCA had indicated a congressional purpose to "supplement[ ]" recovery under § 4126. *Demko*, 385 U.S. at 153, 152.

Moreover, AWPA is not a common law tort regime of the sort held to have been displaced in *Demko*. It is instead a specialized statutory regime for regulating the employment and treatment of migrant farmworkers, whose aim is not only compensation but also the enforcement of an elaborate framework of working, housing and transportation standards.

Finally, *Demko* was nothing more than a straightforward application of the rule that "persons for whom the Government has supplied an administrative compensation remedy are precluded from seeking recovery *against the United States* for injuries received in the course of their work under" various other federal remedial statutes such as the FTCA and the Jones Act. 385 U.S. at 151 n.4 (emphasis added). In contrast, successive recovery under both a state workers' compensation regime and, for example, the Jones Act is not barred where the injured party was not employed by and is not seeking recovery from the federal government. *See, e.g., Thibodeaux* v. *Atlantic Richfield Co.*, 580 F.2d 841, 847 (5th Cir. 1978), *cert. denied*, 442 U.S. 909 (1979); *Roberts* v. *City of Plantation*, 558 F.2d 750, 751 (5th Cir. 1977). This case, of course, involves neither an action against the federal government as an employer nor the existence of an overlapping federal compensation regime.

Petitioners also rely on *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), *cert. denied*, 108 S.Ct. 163 (1987). PB 6. But *Roman* was predicated on a misapplication of *Demko*, *see* 817 F.2d at 1119-20, and was thus wrongly decided. It is therefore of no help to petitioner.

exclude remedies offered by other jurisdictions."); *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 279-80 (1980) (upholding consecutive recovery under two states' workers' compensation systems despite exclusivity provision); *id.* at 275-76 & n.21 (collecting state cases allowing double recovery); *Carroll* v. *Lanza*, 349 U.S. 408 (1955) (upholding recovery under common law tort action in second state despite exclusivity provision in first state's workers' compensation system); *de Cancino* v. *Eastern Air Lines*, 239 So.2d 15, 17 (Fla.S.Ct. 1970) (Florida workers' compensation scheme allows injured party "to seek recovery in more than one state"; the "only pertinence which compensation proceedings in another state may have is concerned with offsetting the amount of benefits received").

And in particular, the rules relevant to "'enforcing a right created by [a] State are hardly relevant for determining the rules which bar enforcement of a right created not by a State legislature but by Congress.'" *DelCostello* v. *Int'l Brotherhood of Teamsters*, 462 U.S. 151, 160 n.13 (1983) (citation, brackets and ellipsis omitted). AWPA "provides a federal cause of action, and the scope of the remedy as well as the substance of the rights created thereby is a matter of federal not state law." *F.D.Rich Co.* v. *Industrial Lumber Co.*, 417 U.S. 116, 127 (1974). "If plaintiff can prove himself entitled to [federal statutory] recovery, the exclusive remedy provisions of Florida's workmen's compensation statutes cannot oust the federal court of its jurisdiction." *Roberts* v. *City of Plantation*, 558 F.2d 750, 751 (5th Cir. 1977).

2. *Petitioner's "incorporation" analysis is insupportable.*

Apparently recognizing that the damages recoverable and the substantive defenses available under § 1854 are entirely creatures of federal rather than state law, petitioner and its *amici* contend that the Florida exclusivity provision nevertheless governs this case because Congress has *incorporated* it into AWPA. This is the crux of their entire argument. *See* PB 17, 18, 24; Brief Amicus Curiae of the California Workers' Com-

pensation Institute ("CWCI Br.") 12; Brief Amicus Curiae of the American Farm Bureau Federation, *et al.* ("AFBF Br.") 18.

But "in the absence of a plain indication to the contrary," the presumption is that Congress does *not* intend to "incorporate" state law into federal statutes. *Jerome* v. *United States*, 318 U.S. 101, 104 (1943). *See also United States* v. *Turley*, 352 U.S. 407, 411 (1957). Petitioner has utterly failed to establish *any* indication, much less a "plain" one, of congressional intent to incorporate this provision. Indeed, petitioner does not even attempt to meet this standard of statutory interpretation, preferring instead to pioneer a truly alarming theory of federal incorporation of state law.

Petitioner offers the following shaky syllogism: (A) Section 1841(c) of AWPA provides that agricultural employers who are covered by state workers' compensation law need not purchase additional insurance to cover the transportation of farmworkers. PB 16. (B) "Congress was well aware of workers' compensation laws [sic] exclusivity provisions," and "if Congress intended AWPA to pre-empt workers' compensation, the text of AWPA could have expressly pre-empted state law." PB 17. (C) Therefore, AWPA's "silence on this point is significant and creates the assumption that state workers' compensation law, in its entirety, is incorporated into the statute." PB 17.

This argument disintegrates at every step. *First*, § 1841(c), as its very title reveals, concerns only "Adjustments of insurance requirements in event of workers' compensation coverage." PB 16; CPA 32a. The most it purports to do is to "adjust" the employer's obligation to comply with "the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond," § 1841(c). CPA 32a-33a. Section 1841(c) is *administrative*, not *remedial*. It deals with the amount and type of *insurance* that employers are required by § 1841(b) to carry, not with the nature and extent of employer *liability* under § 1854's private right of action. It establishes a floor of minimum insurance coverage, not a ceiling of maximum damage recovery. In short, § 1841(c) has nothing

at all to do with the affirmative defenses to AWPA liability that might be available to an employer sued under § 1854.[13]

Second, the fact that Congress was aware of workers' compensation exclusivity provisions and nonetheless chose not to refer to them in § 1841(c) or in any other part of AWPA suggests the exact opposite of incorporation. Congress certainly knows how to incorporate such exclusivity provisions (and the affirmative defense they entail) into a federal civil claim, and has done so elsewhere. The Federal Tort Claims Act, by providing that the United States is liable to suit only to the same extent as a private individual under like circumstances would be under the law of the state where the tort occurred, *see* 28 U.S.C. § 1346(b), incorporates workers' compensation exclusivity into federal law and enables the federal government to invoke it as a defense to liability. *Griffin* v. *United States*, 644 F.2d 846, 847-48 (10th Cir. 1981).

Congress similarly knows how to subordinate recovery under a federal relief program for particular workers to state workers' compensation benefits, and it has done so (where it wished) in unmistakable language. The War Hazard Compensation Act provides a federal avenue to redress "war-risk" injuries only in those cases where the worker has not received state workers' compensation.[14] And the Black Lung Benefits Act expressly integrates federal and state compensation systems, not just minimum insurance requirements, by providing that in states where the Secretary of Labor finds "adequate compensation," 30 U.S.C. § 931(b), a worker's federal avenue for benefits evaporates and his claim "shall be filed pursuant to the applicable State workmen's compensation law," *id.* at § 931(a). There are no such provisions in AWPA because Congress did not intend to subordinate federal recovery under § 1854 to myriad state workers' compensation programs.

[13] Petitioner raised the exclusivity of workers' compensation as its third and fourth affirmative defenses in its Answer to respondents' Complaint. JA 15-16.

[14] 42 U.S.C. § 1705 provides: "No benefits shall be paid or furnished under the provisions of this subchapter for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under . . . the law of any State, territory, possession, foreign country or other jurisdiction." Under § 1705(b), the Secretary has a lien and right of recovery against benefits payable under any other workers' compensation system.

Congress also knows how to incorporate state law into AWPA so as to shield a class of parties from § 1854 liability, and has done so elsewhere. *See, e.g.*, 29 U.S.C. § 1803(a)(3)(B) (fully exempting from AWPA "labor organization[s]" as defined in federal law "or as defined under applicable State labor relations law"). Congress' omission to do likewise with respect to workers' compensation exclusivity provisions is telling.

Third, petitioner gets it exactly backwards when arguing that some discrete congressional references to state law demonstrate congressional intent to work no other displacement of state law. (PB 17). "Although Congress made decisions about the applicability of certain aspects of state law . . . these provisions do not imply that Congress intended no further pre-emption of state law." *Fidelity Fed. Sav. & Loan Assn. v. de la Cuesta*, 458 U.S. 141, 162 (1982). To be sure, as petitioner notes, "the text of AWPA *could* have expressly pre-empted state law," PB 17 (emphasis added); but there is no requirement that Congress restate the obvious — that, under the Supremacy Clause of Article VI, federal law displaces any squarely conflicting state law. Express pre-emption is but one avenue of displacing state law: "where Congress has not completely displaced state regulation, federal law may nonetheless pre-empt state law to the extent it *actually conflicts* with the federal law." *California Fed. Sav. & Loan Ass'n* v. *Guerra*, 479 U.S. 272, 280-81 (1987) (emphasis added).

No fancy pre-emption analysis is needed in this case. Since exclusivity provisions such as Florida's are generally treated as wholly inapplicable to remedies created by other jurisdictions, *see supra* pp. 18-19, there is no need to accuse Florida of meaning to create a conflict with AWPA's private right of action. And, even if Florida *were* spoiling for a fight with the Federal Government, the best course would be the one this Court unanimously navigated in *Sun Ship*: "if federal preclusion ever need be implied to cope with this remote contingency, a less disruptive approach would be to pre-empt the state compensation exclusivity clause, rather than to pre-empt the entire state compensation statute," 447 U.S. at 724 n.6 (dictum).

Fourth, and finally, we come to petitioner's claim that AWPA's "silence" on the issue of exclusivity, after having referred in § 1841(c) to insurance policies under workers' compensation, "creates the assumption that state workers' compensation law, *in its entirety*, is incorporated into the statute." PB 17 (emphasis added). This is nonsense. As this Court explained in *de la Cuesta*, if federal law "were expected to conform to state law except where explicitly pre-empted in the Act itself, the provisions incorporating specific aspects of state law were needlessly repetitive. We decline to construe the Act so as to render these provisions nugatory," 458 U.S. at 163.

More importantly, the rule of statutory construction urged by petitioner and its *amici* would wreak havoc with judicial interpretation of federal enactments. Whenever Congress revealed its awareness of a state statutory or regulatory regime by adverting to it in a federal statute in any respect, no matter how minor, and then did not expressly pre-empt all the remaining provisions of that state regime, this corpus of state law would, under petitioner's theory, be deemed to have been "incorporated" into federal law "in its entirety"! In a single stroke, petitioner would turn both the doctrine of conflict pre-emption and the law of federal statutory incorporation on their heads.

3. *Section 1871 undermines petitioner's analysis.*

Petitioner's bizarre incorporation theory gains nothing from 29 U.S.C. § 1871, where Congress provided that AWPA "is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation." CPA 35a. Petitioner and its *amici* implausibly read "supplement" to negate any congressional intent to displace even a *conflicting* state law provision. PB 7, 15; AFBF Br. 19; CWCI Br. 10. Petitioner's own authority for this reading demonstrates how untenable it is. PB 15-16. In *DeCanas* v. *Bica*, 424 U.S. 351 (1976), which concerned the virtually identical "supplement" proviso

of AWPA's predecessor statute, FLCRA, this Court explained that this proviso negated pre-emption by means of *federal occupation of the field*, but left open the question whether the state law at issue there "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'. . . ." *Id.* at 363 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). But no "occupation of the field" is being suggested here. If the Florida exclusivity provision were applicable by its own terms to the federal remedies provided by § 1854 — which it is not — the pre-emption of that provision, as the Court of Appeals held below, CPA 4a-5a & n.1, would follow from its "actual conflict" with § 1854. And pre-emption of that sort has nothing to do with whether AWPA *supplements* state law or *replaces* it, the only issue to which § 1871 purports to speak.[15]

Indeed, § 1871 supports respondents, not petitioner. The second clause of the provision, which petitioner overlooks, states that "compliance with [AWPA] shall not excuse any person from compliance with appropriate State law and regulation." The most natural reading of § 1871 is that it was written to allow states leeway to provide *additional* or *greater* protection for farmworkers. This section has remained unchanged throughout a quarter-century of federal farmworker legislation. *See* 1963 S.Rep. at 7 (FLCRA); 1974 H.R.Rep. at 21 (FLCRA amendments); 1982 H.R.Rep. at 33 (AWPA). Congress' intent has always been to prevent federal legislation from inadvertently obliterating consistent (or even more stringent) state law protections for migrant and seasonal workers. *See 1973 House Hearings* at 158 (statement of Rep. Ford). To paraphrase this Court in *Guerra*, Congress intended AWPA to be a floor beneath which farmworker protections may not drop — not a ceiling above which they may not rise. 479 U.S. at 285.[16]

[15] This same analysis compels the conclusion, reached by the court below, CPA 5a n.1, that *Roman* v. *Sunny Slope Farms*, 817 F.2d at 1118-19, was wrongly decided because the Court of Appeals for the Fourth Circuit misread § 1871.

[16] For example, on September 15, 1989, California enacted amendments to its labor code that go beyond AWPA in outlawing and punishing labor contractor misrepresentations. Cal.Labor Code § 1697.1. The private right of action thereunder is arguably even more potent than § 1854 of AWPA, for it provides for actual damages, equitable relief, and punitive damages in an amount equal to three times the sum of actual damages awarded. § 1697.1(c). California law also mandates stiff record-keeping requirements and provides that they are *in addition* to those of AWPA. § 1695.5(c).

Therefore, § 1871 cannot be invoked to infuse Florida's exclusivity provision with the force of federal law. Indeed, the exclusive remedy provision of Fla.Stat. § 440.11 is not something with which, under § 1871, any private actor *could* fail to "comply," since it does not govern conduct but merely sets out legal rights under state law. And as for respondents, in their § 1854 cause of action they have not failed to "compl[y] with appropriate state law," but have simply sought to remedy *petitioner's* intentional *non*-compliance with *federal* law.

4. *Congress has already rejected the precise workers' compensation exclusivity defense that petitioner seeks from this Court.*

Even if petitioner's unprecedented theory of federal incorporation of state law were less threatening to this Court's long-settled doctrines, the notion that AWPA incorporates state exclusivity provisions would nevertheless have to be rejected. For the legislative history reveals that such provisions were in fact anathema to Congress; that is why Congress in 1978 rejected the Ireland Amendment, which — as petitioner and its *amici* candidly describe it — "would have explicitly recognized that state workers' compensation benefits were the exclusive remedy for bodily injuries to covered employees." AFBF Br. 22. *See also* PB 28-29 & n.6 ("Congress rejected an amendment to incorporate workers' compensation into FLCRA in 1978"; the Ireland Amendment "would provide that the workers' compensation would be exclusive, if applicable."). *See supra* pp. 5-7.

There is no other reference to state exclusivity provisions in the legislative history of AWPA, either before or after 1978. Consequently, to make their case for a state-law exclusivity defense to employer liability under § 1854, petitioner and its

amici forsake § 1854 and the actual text of AWPA altogether, relying solely on the legislative history of § 1841(c). And even with respect to that largely irrelevant section from a different part of the statute, they have unearthed only one supposedly pertinent scrap of history, which they adduce again and again. PB 8, 10, 14, 31; AFBF Br. 15, 18, 24. Page 20 of the 1982 House Report on AWPA describes § 1841(c) as providing that "in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained." Petitioner and its supporters read this as an assurance to farm employers that they need not take out any additional insurance because workers' compensation is the limit of their personal injury liability exposure under AWPA. They are mistaken.

As previously explained, *supra* pp. 11, 20-21, § 1841(c) pertains solely to the level of liability insurance that farm employers are *legally required* to carry by Title IV of AWPA, and not to whatever level of additional coverage they may deem advisable (according to their independent business judgment) to insure against liability under the private cause of action created by Title V. The extent of civil liability under § 1854 of AWPA is discussed on the following page of the House Report: "Where an intentional violation [of AWPA standards] has been committed, the Act permits a farmworker to recover either an amount equal to his *actual damages where there is no dollar limit* or statutory damages of up to $500.00 per plaintiff for each violation of a single provision with an upper limit of $500,000 for a class action." 1982 H.R.Rep. at 21 (emphasis added).

There is no mention of a workers' compensation exclusivity defense that would oust farmworkers from a federal court, as respondents were ousted from the district court below. Indeed, the Report unambiguously declares that "The Committee's intent is . . . to insure full access to the Federal courts by injured private parties." *Id.* Yet petitioner now asks this Court to approve such a defense in order to deny respondents' statutory and actual damages as well as injunctive relief — in manifest frustration of Congress' deliberate plan to use § 1854's

private right of action to enforce AWPA's safeguards and to make injured farmworkers whole. Especially since the benefits available under workers' compensation were consistently criticized by Congress and the Department of Labor as inadequate to justify exclusivity, *see supra* pp. 4, 6 & note 5, it makes absolutely no sense to say that Congress meant to (silently) incorporate those same levels into AWPA.[17]

It is impossible to conclude in the face of this history that Congress, having rejected in 1978 an amendment incorporating state exclusivity provisions into federal law, wordlessly reversed itself in 1983 and, by indirection, enacted the exclusivity defense it had previously repudiated.[18]

Apparently recognizing the peril in which Congress' rejection of the Ireland Amendment places their "silent incorporation" argument, petitioner and its *amici* decline to meet it head-on. Because the Ireland Amendment involved FLCRA rather than AWPA, they dismiss it as the irrelevant legislative history of a different statute. PB 28-29; AFBF Br. 22. This argument is transparently unavailing. FLCRA was the predecessor statute to AWPA and this Court has long recognized the importance of understanding congressional intent as expressed over time in a series of related or successor statutes.[19] Petitioner tacitly acknowledges as much, since it relies on

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[17] Compare *United States* v. *Turley*, 352 U.S. at 414, 417, where this Court rejected the argument that restrictive state law definitions of a crime had been incorporated into federal law in the face of a House Report criticizing state laws as inadequate to cope with the auto theft problem.

[18] Compare *Jerome* v. *United States*, 318 U.S. at 105-06, where this Court wrote: "It is difficult to conclude in the face of this history that Congress, having rejected in 1934 an express provision making state felonies federal offenses, reversed itself in 1937, and, through the phrase 'any felony or larceny,' adopted the penal provisions of forty-eight states with respect to acts committed in national or insured banks. It is likewise difficult to believe that Congress, through the same clause, adopted by indirection in 1937 much of the fraud provision which it rejected in 1934."

[19] *See, e.g., Xerox Corporation* v. *County of Harris*, 459 U.S. 145, 150-53 (1982) (examining legislative history of the 1846 Warehousing Act because it was "[a] forerunner]" of contemporary bonded warehouse statutes); *Williams* v. *United States*, 327 U.S. 711, 719-24 (1946) (examining Federal Crimes Act of 1790 and successor statutes in order to illuminate congressional intent behind contemporary Assimilative Crimes Act).

DeCanas v. *Bica* to support its own reading of AWPA, even though that case was decided under FLCRA. PB 15.[20]

Petitioner and its *amici*[21] thus ask this Court for what Congress has already denied them. If Congress has previously rejected legislation aimed at giving a statute a desired effect, a statutory "interpretation" accomplishing the same end should be repudiated as especially suspect. It would be "improper for [this Court] to give a reading to the Act that Congress considered and rejected." *Pacific Gas & Electric Co.* v. *State Energy Resources Comm'n*, 461 U.S. 190, 220 (1983). *See also Hallstrom* v. *Tillamook County*, 58 U.S.L.W. 4007, 4009 (U.S. Nov. 7, 1989) ("we are not at liberty to create an exception [from a statute] where Congress has declined to do so.").

II. REGULATION 500.122(b), WHICH THE DEPARTMENT OF LABOR HAS NOT DEFENDED, PROVIDES NO SUPPORT FOR PETITIONER'S PROPOSED RE-WRITE OF § 1854.

Petitioner and its friends urge this Court to defer to the Department of Labor and accept the so-called "interpretation" of AWPA set forth in its 1983 regulation, 29 C.F.R. § 500.122 (b).[22] PB 24-28; AFBF Br. 10-19. All agree that the appropriate starting place for evaluating this plea for deference is *Chevron* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984):

[20] Although AWPA repealed FLCRA, AWPA was understood at that time by its drafters and subsequently by the courts interpreting it as largely a re-enactment of the earlier law. *See supra* pp. 8-9 & note 9. Moreover, the cause of action under which respondents have brought suit, now embodied in 29 U.S.C. § 1854, originated in the 1974 amendments to FLCRA. The only changes made in liability under this cause of action pertain to new limits on statutory damages, not actual damages, and in any event petitioner invokes the Florida exclusivity provision as an absolute bar to both — a position submitted to and rejected by Congress in 1978, largely on the ground that a workers' compensation regime was inadequate to satisfy the twin congressional goals of fully compensating injured farmworkers and vigorously deterring violations of federal law. *See supra* pp. 6-7.

[21] *Amicus* American Farm Bureau Federation testified in support of the Ireland Amendment in 1978. *1978 House Hearings* at 120, 123 (statement of C.H. Fields, AFBF).

[22] Regulation 500.122(b) provides: "Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death."

> If the intent of Congress is clear, that is the end of the matter; . . . If, however, the court determines Congress has not directly addressed the precise question at issue, . . . [i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.

467 U.S. at 842-44. *See also NLRB* v. *United Food & Commercial Workers Union*, 108 S.Ct. 413, 426-27 (1987) (Scalia, J., concurring) (under *Chevron*, deference to the agency's interpretation is appropriate when "'the statute is silent or ambiguous' with respect to an issue . . . committed to [the agency's] charge").

Here the intent of Congress could not be more clear. As demonstrated above, *see* pp. 16-17, Congress included several express limits on liability for statutory damages in § 1854, and elsewhere exempted some agricultural employers from AWPA altogether by specifically incorporating state law. But nowhere did Congress suggest that the existence of a state workers' compensation regime might bar relief for death or bodily injury under § 1854. The legislative history confirms congressional intent to assure full access to federal courts, awards of equitable relief and full actual damages without a dollar limit, and no requirement that alternative remedies be exhausted. Most dramatically, Congress in 1978 rejected an amendment that would have written petitioner's proposed exclusivity rule into federal law.

As might be expected, petitioner and its *amici* ignore the text of § 1854 and search for ambiguity elsewhere. They claim to have found it in § 1841(c).[23] But this section gets them no-

[23] Section 1841(c) provides: "Adjustments of insurance requirements in event of workers' compensation coverage: If an agricultural employer, agricultural association, or farm labor contractor is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and

where. The "[a]djustments of insurance requirements in event of workers' compensation coverage" called for in § 1841(c)'s title may well require some interstitial interpretation by the Department of Labor. That would justify such regulations as 29 C.F.R. § 500.122(c), which explains how an employer may demonstrate to the Department that he is eligible for this exception to the AWPA insurance policy requirement. But included along with such unexceptional regulations is this aberration, § 500.122(b), which has nothing to do with adjusting insurance requirements under § 1841 and everything to do with altering liability under § 1854.

Even if Congress' intent respecting AWPA's private right of action were unclear, the *Chevron* rule of deference would remain inapplicable to this case. For Congress has not "left a gap" in AWPA's civil remedy for the Secretary "to fill." *Chevron*, 467 U.S. at 843. Indeed, far from *filling* a gap in insurance requirements, Regulation 500.122(b) *creates* a gap both in enforcement and in compensation under AWPA by entirely eliminating the congressionally created private right of action for AWPA violations resulting in bodily injury in any state with an applicable workers' compensation program, however inadequate. Nor has there been an "express delegation of authority to the [Secretary] to elucidate" § 1854 "by regulation." *Chevron*, 467 U.S. at 843-44. Regulation 500.122(b) was issued pursuant to § 1841(d), which authorizes the Secretary to "prescribe the standards required for the purposes of implementing this section," which, according to its subtitles, deals with "Motor Vehicle Safety," (title of § 1841) and "Adjustments of insurance requirements," (title of § 1841(c)). CPA 33a. Thus both the language and the title of the section make § 1841(d)'s limited function — and the Secretary's limited au-

such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply: (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law. (2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law."

thority thereunder — quite clear. *Cf. Mead Corp.* v. *Tilley*, 109 S.Ct. 2156, 2162 (1989).[24]

Nor is this Court dealing with the Secretary's "construction of the statute which [he] administers," *Chevron*, 467 U.S. at 842, for he does not administer § 1854. That private civil remedy, unlike the supervision of employer insurance policies, and unlike the elaboration of detailed safety standards, has not been "committed to [the Secretary's] charge." *United Food & Commercial Workers*, 108 S.Ct. at 427 (Scalia, J., concurring).

Indeed, before entering the thicket of agency deference doctrine, this Court would be well advised to take two steps back and recall that what Regulation 500.122(b) purports to interpret and implement is not a scheme of administrative law at all, but a *"private right of action"*. § 1854 (title) (emphasis added). CPA 33a. As such, § 1854 is quite frankly none of the Secretary of Labor's business. Responsibility for "administering" or "implementing" this cause of action has been reposed in the Federal Judiciary, not in the Department of Labor. *Cf. Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456-57 (1957) (construing § 301 of the Labor Management Relations Act as a grant of authority to the federal courts to fashion a body of remedial

[24] "It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen* v. *Georgetown University Hospital*, 109 S.Ct. 468, 471 (1988). A regulation must be set aside if it is "'in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.'" *Bureau of Alcohol, Tobacco & Firearms* v. *FLRA*, 464 U.S. 89, 97 n.7 (1983) (quoting 5 U.S.C. §§ 706(2)(A) & (C)). *See also Securities Industry Ass'n* v. *Federal Reserve Board*, 468 U.S. 137, 143 (1984) (courts "'must reject administrative constructions of [a] statute . . . that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement'") (citation omitted).

The generic, boilerplate grant of rulemaking power in § 186; (authorizing the Secretary to "issue such rules and regulations as are necessary to carry out this Act") obviously affords petitioner no solace, for it contains no express grant of authority to alter AWPA's private right of action. *Cf. Georgetown Hospital*, 109 S.Ct. at 474 ("The statutory provisions establishing the Secretary's general rulemaking power contain no express authorization of retroactive rulemaking."). Such an express grant of authority is required to justify agency action altering or setting aside the detailed regime set forth in a separate statutory provision that "directly address[es]" the particular subject in issue and "reflect[s] a specific set of congressional concerns." *Brae Corporation* v. *United States*, 740 F.2d 1023, 1059 (D.C.Cir. 1984), *cert. denied*, 471 U.S. 1069 (1985).

law). In fact, Congress effectively deputized farmworkers as private attorneys general under § 1854 in large part because Congress deemed the Labor Department's enforcement efforts to be inadequate and unreliable. *See supra* pp. 2-3, 10-11.[25] The presence in § 1854 of detailed provisions for the award of statutory damages up to a total of $500,000 in a class action, even when actual damages resulting from those same AWPA violations may be nominal, underscores the importance of this private right of action as a means of enforcing federal law. The suggestion that Congress nevertheless intended, by its delegation of standards-prescribing authority in § 1841(d), to grant the Labor Department discretion simply to eliminate the private enforcement mechanism of § 1854 is tantamount to an assertion that Congress put a not-entirely-reformed fox in complete charge of the henhouse. Surely that is unthinkable.

It is perhaps unsurprising, therefore, even if highly unusual, that the Department of Labor has chosen not to defend its regulation either in the Court of Appeals or before this Court, and that the Solicitor General has entered no appearance here.[26] There is thus a hollow ring to the cries that the Department's prerogatives have been disparaged and that the integrity of the administrative process has been violated. AFBF Br. 9-10.[27]

[25] As Representative Ford, co-sponsor of FLCRA and AWPA put it, "I have joined with others who have been extremely critical of the Labor Department for what they considered to be something less than adequate attention to the problems of migrant workers, and the refusal, in some instances, of the Labor Department to assert its jurisdiction . . . . We have used every device possible in this committee to prod, criticize and sometimes castigate the Labor Department to push for vigorous enforcement of the laws." *1975 Oversight Hearings* at 15.

[26] Contrast *Chevron*, where the Office of the Solicitor General not only defended the challenged regulation for the EPA but even presented the oral argument on behalf of petitioner Chevron.

[27] The Department's failure to defend its own regulation is far more significant and telling than is the supposed lack of objection to Regulation 500.122(b) when it was promulgated. *See* PB 25-26; AFBF Br. 9, 15. As to the latter, petitioner and its *amici* are engaging in rank speculation. Since the Department of Labor has long since lost the Notice and Comment file on this regulation, *see* note 10, *supra*, there is no way *to know* whether objections to § 500.122(b) were raised or not. In any event, given the hundreds of AWPA regulations proposed the same day as subsection 500.122(b), and the way in which it was squirreled away in a legitimate insurance regulation bearing an innocuous title, it is easy to see how § 500.122(b) could have been overlooked in the accelerated comment period.

Whatever the Department's reasons for declining to defend § 500.122(b), it remains the case that no deference is due its original decision to promulgate that regulation. When an executive agency consistently criticized by Congress for failing to enforce the law usurps lawmaking power in order to eviscerate the private cause of action Congress created to fill the enforcement void, its work cannot be described as a mere "bureaucratic success story." *Morrison v. Olson*, 108 S.Ct. 2597, 2615 (1988).

After all, § 1854 is not a controversial judicially-implied cause of action about which jurists may remain somewhat skeptical. Compare *Thompson* v. *Thompson*, 108 S.Ct. 513 (1988). It is an express right of action, modeled by Congress on the civil rights statutes. *See supra* p. 3. If the creation of a private federal right of action is a uniquely legislative task, *see Thompson*, 108 S.Ct. at 522-23 (Scalia, J., joined by O'Connor, J., concurring in the judgment); *Cannon* v. *University of Chicago*, 441 U.S. 677, 742-45, 749 (1979) (Powell, J., dissenting), then no other branch has any business suspending that right of action — particularly through the creation of state-law defenses that Congress has considered and rejected.[28] As this Court unanimously held in *Bureau of Alcohol, Tobacco & Firearms* v. *FLRA*, "the 'deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress.'" 464 U.S. at

[28] Indeed, even though the view that there is no place in our constitutional order for "a sort of junior-varsity Congress," *United States* v. *Mistretta*, 109 S.Ct. 647, 683 (1989) (Scalia, J., dissenting), was deemed by the majority to be inapplicable to the sentencing commission in *Mistretta*, the principle itself is unimpeachable and seems an apt description of the role the Department of Labor arrogated to itself in promulgating the free-floating Regulation 500.122(b).

It is almost as though the Deparment had enacted a mini-Rules of Decision Act, directing federal courts in federal question cases to apply the substantive defenses or other door-closing rules of the states in which they sit. The background principles under which federal courts borrow, from those states, statutes of limitation and other ancillary aspects of laws they administer, *see, e.g.*, 42 U.S.C. § 1988, are obviously of no avail when the borrowed state law provision operates to detonate a congressionally created federal cause of action from the moment of its inception in any state with an applicable workers' compensation scheme of the very type criticized as thoroughly inadequate by the Congress that created the federal cause of action.

97 (citation omitted). *Cf. Bowsher* v. *Synar*, 478 U.S. 714, 756 (1986) (Stevens, J., concurring in the judgment).

III. THIS COURT SHOULD NOT HEED PLEAS THAT IT BRUSH ASIDE THE LAW IN ORDER TO AVOID ALLEGED ANOMALIES IN AWPA'S ADMINISTRATION.

Petitioner and its allies contend that several anomalies in the administration of AWPA's private right of action will ensue if the judgment below is affirmed and their pleas for creation of a workers' compensation exclusivity defense to § 1854 liability are rejected. They predict incongruous results and dire consequences unless § 1841(c)'s reference to the adequacy of state workers' compensation insurance coverage as a substitute for a liability policy or bond is construed as a far more sweeping congressional incorporation of workers' compensation "in its entirety," including its exclusive remedy provisions.

Petitioner makes its pleas in the wrong forum. A "seeming incongruity" is insufficient to justify judicial expansion of a limited congressional reference to state law. *Northbrook Nat'l Insurance Co.* v. *Brewer*, 110 S.Ct. 297, 300 (1989). And although it may be "appealing," *id.* at 301, to pass over the most natural reading of a statute in order to avoid accepting a legislative vision that "seems somewhat anomalous," *id.* at 300, this Court should "refuse to attribute to Congress an intent broader than that specifically expressed" in the narrow reference in § 1841(c). *Id.* at 301. Congress "could easily have used language" to make 1841(c) set *maximum liability limits* in addition to setting *minimum insurance requirements*, "and it can easily do so still." *Id.* But that is a legislative task, and those who wish to see it performed should venture across the street to Capitol Hill.

Even if the anomalies that petitioner perceives were relevant to this Court's construction of AWPA, however, they would remain wholly insubstantial.

A. The Nature Of The Legislative Compromise That Led To AWPA's Enactment Does Not Justify Re-Writing Its Express Terms And In Fact Supports The Unfettered Remedial Power Of The Federal Courts Under § 1854.

Petitioner never tires of asserting that AWPA was a "consensus" bill, a grand compromise supported by all sides and interests. PB 13, 21, 22, 23, 25; AFBF Br. 10-11. Reading § 1854 to provide a private cause of action even when workers' compensation applies is untenable, we are told, because that would give farmworkers everything they could wish for in the law: AWPA was a compromise, and everyone knows that a "compromise, by its very nature, is not perfect for either side." PB 23-24. A "farm worker cannot always 'have it all' under the Act." PB 24.

But describing AWPA as a "compromise" bill hardly distinguishes it from the mine run of legislation. It is a rare bill that can get past 535 legislators and one presidential veto *without* being a compromise of sorts. More importantly, affixing the label "compromise" to a law gives petitioner no license to conform that law to its own vision of the legislative compromise *it* would have preferred. The language enacted still controls, and neither § 1841 nor § 1854 makes workers' compensation exclusivity a bar to full federal judicial relief under AWPA's private right of action.

Moreover, petitioner completely misapprehends the nature of the compromise that spawned AWPA in 1983. As revealed by the congressional testimony of the same organizations that appear as *amici* here, what really peeved fixed-site farm employers about the predecessor statute, FLCRA, was the indignity and bureaucratic hassle of being forced to register as if they were fly-by-night farm labor contractors, and the resulting exposure to administrative fines and civil damages for easily cumulated technical registration violations. *1982 House Hearing* at 57-59 (statements of the National Council of Agricultural Employers and American Farm Bureau Federation). *See also supra* pp. 7-8.

Addressing these legitimate employer concerns did not entail reducing the protection of farmworkers. In the transition from FLCRA to AWPA, all the safeguards for farmworker rights were retained and in fact expanded by being made directly applicable to such fixed-site employers as petitioner, who would no longer be required to register as labor contractors.[29] With respect to AWPA's private right of action, the trade-off was an end to employer exposure to "substantial monetary awards for highly technical violations, especially those related to registration status," in exchange for "no limit on the amount of actual damages that can be awarded by a court" where "an intentional violation of the act has been committed . . . ." 128 Cong.Rec. 32,463 (1982) (statement of Sen. Hatch).

Even so, imposition of this liability for full actual damages on fixed-site employers such as petitioner Adams Fruit, a citrus grower, was not accomplished by acclamation. A citrus industry trade association vigorously protested the extention of AWPA's private right of action. *1982 House Hearing* at 176 (statement of Agricultural Producers). Petitioner is of course free to return to Congress with its objections to unlimited liability under § 1854. But for now, the grand compromise of AWPA confirms that workers' compensation coverage is no defense to § 1854.

[29] "Each side achieved some long-sought goal. For instance, the fixed situs agricultural employer groups objected to the burdens of registration as farm labor contractors and objected to the possibility of being selectively subject to the prohibitions on hiring illegal aliens. In exchange for lifting those burdens, the agricultural employer groups agreed to offer certain additional protections to migrant and seasonal farmworkers and assume the joint employer concept . . . ." 128 Cong.Rec. 26,009 (1982) (statement of AWPA co-sponsor Rep. Erlenborn). *See also* 128 Cong.Rec. 32,466 (1982) (statement of Robert Collyer, Deputy Under Secretary of Labor).

B. Petitioner Distorts AWPA's Legislative History In Arguing That, If Such Liability Is In Fact Unlimited, Congress Deceived Farm Employers As To The Amount Of Insurance They Need.

Another of petitioner's repeated refrains is that a judicial refusal to allow workers' compensation as a defense under § 1854 will imperil the solvency of many farmers who have followed Congress' supposed advice and not obtained additional insurance for AWPA liability. PB 9, 10, 14, 20, 22, 31; AFBF Br. 9, 24-25. We are told that Congress could not have "intended to mislead farm employers and expose them to past and present uncovered claims." PB 9. Therefore, it is said, § 1841(c)'s reference to state workers' compensation insurance, as an adequate substitute for the insurance otherwise required by AWPA, must be read to make workers' compensation, where it applies to farmworkers, the exclusive remedy for bodily injury under AWPA.

This entire argument is based not on the language of § 1841(c), which makes no mention of workers' compensation as an exclusive remedy, but on a single line from the House Report: "The Act further provides that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damages to persons need be obtained." 1982 H.R.Rep. at 20. Petitioner and its *amici* insist that this sentence constitutes congressional "assurance" to farmer employers that "purchasing any coverage beyond workers' compensation was unnecessary." PB 10. *See also* PB 14; AFBF Br. 24.

As explained above, however, the House Report's statement that no further insurance "need be obtained" means only that no further insurance is *legally mandated*. *See supra* pp. 11, 20-21, 26. This is wholly consistent with liability for full actual damages under § 1854, because such a statutory limit on the insurance one must carry does not set a limit on the liability to which one might be exposed. There is nothing peculiar in this congressional decision to mandate a minimum level of coverage while leaving it up to agricultural employers to decide for themselves how to handle the remainder of their potential risk.

Even if an agricultural employer buys all the personal injury coverage that insurance companies will sell him, his liability for injuries to others is not capped at that level, and his assets remain subject to seizure to satisfy judgments that his insurance will not cover. This is a risk inherent in doing business — or, for that matter, in driving a car.[30] To be sure, someone who has been adjudicated a deliberate AWPA violator may become judgment proof when his insurance coverage has been exhausted and his assets depleted. But this affects not the level of his liability — only the injured party's ability to collect. Partially or wholly uncollectible judgments are a common fact of life. Minimum insurance requirements, like § 1841 of AWPA, are instituted to assure that injured parties get *at least some* of what they have coming to them.[31]

The feigned surprise by petitioner and its *amici* at the extent of liability under § 1854, even in states with applicable workers' compensation regimes, is unconvincing.[32] The statutory language is entirely clear: § 1841(c) by its terms deals *only* with minimum insurance requirements, and § 1854, by *its*

[30] States commonly require automobile owners, for example, to carry a designated minimum level of liability insurance as a prerequisite to registering and operating their vehicles, but that requirement does not limit the owners' liability. That, of course, is why many drivers buy more than the legal minimum of coverage.

[31] Even considered within the confines of AWPA, there is no anomaly in the fact that workers' compensation may fulfill a farm employer's insurance obligation without fully exempting the employer from all personal injury liability incident to his transportation of farmworkers. That situation obtains even under the Labor Department's and petitioner's reading of AWPA with respect to injured parties who are not employees, such as the families of migrant workers or third parties. Regulation 500.121(d) normally requires insurance against liability to such parties, but that requirement appears to be suspended by §§ 500.121(a) and 500.122(b) in states where workers' compensation applies to farmworkers. Of course, farmers may still choose to insure against this liability, just as they are free (but not required) to obtain liability insurance beyond workers' compensation.

[32] For example, the American Farm Bureau Federation has apparently recognized from the beginning that workers' compensation was no bar to private civil liability under federal law, since it supported the Ireland Amendment intended to change that situation in 1978. *See 1978 House Hearing* at 120, 123 (statement of C.H.Fields, AFBF). As noted above, p. 10, some agricultural groups likewise opposed the extention of what they deemed "oppressive" private civil liability to fixed site employers in AWPA in 1983.

terms, provides for awards of full actual damages as well as all appropriate equitable relief without hinting at any workers' compensation defense.

Federal insurance requirements for transportation of farmworkers under FLCRA and AWPA have *always* been understood to be statements of legal mimimums, not advice to farmers on advisable maximums. In the 1974 Hearings on FLCRA, *amicus* American Farm Bureau Federation opposed the minimum transportation insurance requirements on the ground that it would be onerous or impossible for many labor contractors to obtain coverage: "If the purpose of this bill is to put most of the labor contractors out of business, it may very well accomplish its purpose." *1974 Senate Hearings* at 155 (statement of C.H.Fields, AFBF). Senator Nelson replied that that was not the bill's purpose, and explained that the congressional policy was to guarantee that damage awards would be at least partially recoverable while otherwise leaving employers free to insure to the level their judgment dictates:

> There are individual workers who have suffered disasters, death and injury from being hauled in poor equipment that I am sure you are well aware of, and the objective here is to see if we can provide some adequate insurance to protect them. There are all kinds of individuals, just for their own automobile, who carry that much insurance, even though they are not carrying anybody else in the car for commercial hire. I carry more than that myself.

Id. at 155 (statement of Senator Nelson). Petitioner and its fellows have always been similarly free to insure beyond the AWPA minimum, and Congress never advised them to do otherwise.

If petitioner or any other farm employer misunderstood § 500.122(b) as advice by the Department of Labor not to buy liability insurance in excess of workers' compensation, it might conceivably wish to complain to DoL if it then gets hauled into federal court on an AWPA damages claim for which it is

under- or un-insured. But it is hard to see how an employer sued for damages under § 1854 could have anyone but itself to blame for its unhappy situation, since AWPA liability does not thunder down on hapless employers like a bolt from the blue: AWPA is not a no-fault regime; no employer is liable under § 1854 unless it *intentionally* violates AWPA's provisions. And even if one accepts that the DoL may have indirectly given bad advice about insurance coverage, it certainly did *not* advise employers to violate federal law. Thus, with respect both to obtaining ample insurance and to eshewing intentional violations of the law, petitioner's fate has always been in its own hands.

In any event, a defendant's imprudent reliance on such an unauthorized, *ultra vires* act *of the government*, which is not even a party to this litigation, certainly cannot defeat a *private* plaintiff's right to bring a *private* damages action under AWPA. To reach any other conclusion would radically rewrite the law of estoppel. In the name of honoring a wholly unjustified form of reliance by businesses in petitioner's situation, it would reduce the full damages guarantee of § 1854 to what Justice Jackson — in an early case of hostility to migrants — called a "promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U.S. 160, 186 (1941) (Jackson, J., concurring).

C. The "Double Dipping" That Petitioner Decries Is Neither Unusual, Nor Unavoidable, Nor Objectionable.

Petitioner contends that Congress could not have intended that injured farmworkers collect both workers' compensation benefits and AWPA statutory or actual damages for the same work-related injury. Such "double-dipping," we are told, would be a senseless aberration. PB 19-20, 22, 30. The American Farm Bureau Federation asserts that "[v]irtually all other employees in the United States are limited to their workers' compensation remedies; there is no evidence that Congress wanted to give agricultural workers rights in excess of those other employees." AFBF Br. 20.

Petitioner and its *amici* are once again mistaken. Recovery under *both* a state workers' compensation system and a federal statutory remedy is hardly unique to AWPA. This sort of remedial overlap exists under the Longshoremen's and Harbor Workers' Compensation Act,[33] the Jones Act,[34] and the Civil Rights Act.[35] Nor is it surprising that this federal overlap exists with respect to migrant and seasonal farmworkers, who in § 1854 of AWPA enjoy a carefully tailored private cause of action, with no diversity requirement and no administrative exhaustion requirement, as well as provisions for statutory liquidated damages, unlimited actual damages and court-appointed attorneys. Migrant and seasonal farmworkers are deemed a special case throughout federal law. They are left out of the protection of some laws,[36] while their unique transient and seasonal status entitles them to special treatment, dedicated programs and more lenient eligibility rules under a host of other federal statutes.[37]

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[33] *See Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. at 723-24 (the congressional plan was "[c]oncurrent jurisdiction for state and federal compensation laws" in order to "rais[e] awards to a federal minimum").

[34] *See Roberts* v. *City of Plantation*, 558 F.2d 750, 751 (5th Cir. 1977) ("If plaintiff can prove himself entitled to Jones Act recovery, the exclusive remedy provisions of Florida's workmen's compensation statutes cannot oust the federal court of its jurisdiction."); *Manuel Caceres* v. *San Juan Barge Co.*, 520 F.2d 305, 306 (1st Cir. 1975) ("The Jones Act by its terms gives this plaintiff a cause of action; he retains it unless some other statute validly deprives him of it," and nothing in federal law "extend[s] to Puerto Rico the power to supplant federal maritime law").

[35] *See Rosa* v. *Cantrell*, 705 F.2d 1208, 1221 (10th Cir. 1982) (even though plaintiff accepted workers' compensation death benefits, the "exclusive remedy of state Workers' Compensation statutes does not bar recovery against an employer under [42 U.S.C.] § 1983."), *cert. denied*, 464 U.S. 821 (1983).

[36] Agricultural workers are not subject to the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 213(b)(12), and those employed on small farms are not covered by the minimum wage requirement of that Act, *id.*, § 213(a)(6) or by the Occupational Health and Safety Act, 29 C.F.R. § 1928.110(a). Farmworkers are likewise excluded from the National Labor Relations Act, 29 U.S.C. § 152(3).

[37] Migrant farmworkers are afforded special treatment under the Food Stamp Act to facilitate their receipt of benefits. *See, e.g.*, 7 U.S.C. §§ 2014(f)(2)(A) & (k)(2)(E). *See also* Child Nutrition Act, 42 U.S.C. § 1786(f)(C)(iv) (special plan to meet nutritional needs of migrant workers and their children); Elementary and Secondary Education Act, 20 U.S.C. § 2761 (special program addressing needs of migrant children); Job Training Partnership Act, 29 U.S.C. § 1672

The dual recovery that petitioner and its *amici* find so strange is in fact a familiar phenomenon in state as well as federal law. Workers' compensation exclusivity provisions do not stop an injured worker from recovering under two different states' workers' compensation programs (or from one state's workers' compensation scheme and another state's tort remedies) for the same injury. *See supra* pp. 17-19. And in some states injured workers can recover under both workers' compensation and another disability insurance scheme, such as unemployment compensation, despite an exclusivity provision.[38]

Lest this seem a shameless parade of double-dipping, it must be remembered that the right to pursue two *remedies* does not necessarily result in duplicative *recovery*. The court below recognized the power of a district court to offset workers' compensation benefits when calculating an award of actual damages under § 1854. CPA 14a-15a. Although petitioner and its *amici* protest that such offsets are unworkable, PB 30-31; Brief Amicus Curiae of John I. Haas, Inc. 4-5, their self-serving prognostications are contradicted by the experience of this Court and many others, which have long found offsets to be an acceptable and effective means of preventing duplicative recovery under workers' compensation and some other legal remedy or insurance scheme.[39] Indeed, such setoffs have already been successfully employed in this very case, requiring respondents fully to reimburse the Florida workers' compensation insurer after they prevailed in a separate products liability suit against the manufacturer of the defective tire that caused their accident. *See supra* note 11.

(special program for migrant and seasonal farmworkers); Immigration Reform and Control Act, 8 U.S.C. § 1160 (special procedures for legalization of alien agricultural workers).

[38] *See, e.g. Montney* v. *State Highway Department*, 772 P.2d 360, 363-64 (N.M.App. 1989) (dual recovery is available under workers' compensation and Public Employees Retirement disability insurance, unemployment compensation benefits or veterans' disability benefits), *cert. denied*, 769 P.2d 731 (N.M.S.Ct. 1989).

[39] *See, e.g., Sun Ship*, 447 U.S. at 725 n.8; *Landry* v. *Carlson Mooring Service*, 643 F.2d 1080, 1088 (5th Cir.), *cert. denied*, 454 U.S. 1123 (1981); *Reese* v. *Sears, Roebuck & Co.*, 731 P.2d 497, 503 (S.Ct.Wash. 1987); *Hamilton* v. *County of Los Angeles*, 131 Cal.App.3d 982, 997 (1982).

Petitioner's concern about double recovery is in any event misplaced. Workers' compensation and AWPA address distinct problems and have different aims. The former arose to protect employees, "victims of industrial injuries who had been deprived of other remedies because of common law doctrines such as contributory negligence and the fellow servant rule." *Reese* v. *Sears, Roebuck & Co.*, 731 P.2d 497, 503 (S.Ct.Wash. 1987). *See also Boscaglia* v. *Michigan Bell Tel. Co.*, 420 Mich. 308, 315 (Mich.S.Ct. 1984). Section 1854, in contrast, is an enforcement and compensation mechanism for *anyone* (not just employees) aggrieved by *intentional* (rather than "no fault") violations of AWPA's panoply of farmworkers' rights and safety standards.

The supposed overlap between AWPA and workers' compensation is thus uncertain at best.[40] As petitioner concedes, PB 18 n.4, even exclusive workers' compensation regimes do not displace common law actions for intentional torts, and there are major and subtle variations among the states as to the meaning of intent. For example, some states have construed workers' compensation not to displace actions against employers who knowingly or recklessly violate safety regulations or furnish unsafe workplaces.[41]

[40] The Florida Supreme Court, for example, has itself recognized that workers' compensation does not displace and is no substitute for a federal cause of action provided as part of an important federal policy, such as the civil rights laws. *Byrd* v. *Richardson-Greenshields Securities, Inc.*, No.72,788, slip op. at 9-10 (Fla.S.Ct. Oct. 26, 1989). Section 1854 of AWPA was consciously modeled as a civil rights statute for migrant and seasonal farmworkers. *See supra* p. 3.

[41] *See, e.g., Mandolidis* v. *Elkins Industries, Inc.*, 246 S.E.2d 907, 914 (S.Ct.App.W.Va. 1978) (workers' compensation exclusivity no bar to tort action alleging wilful, wanton or reckless employer misconduct, or employer knowledge and consciousness that injury is likely to result from the safety violation or failure to correct the safety violation); *Greene* v. *Carolina Freight Carrier*, 663 F.Supp. 112, 114 (S.D.W.Va. 1987) (workers' compensation exclusivity no bar to tort action alleging that employer required employee to work under known specific unsafe working condition); *Davis* v. *Rockwell Int'l Corp.*, 596 F.Supp. 780, 786 (N.D.Ohio 1984) (workers' compensation exclusivity no bar to tort action alleging an intentional failure to warn employees of dangerous conditions; no actual intent to injure is required); *Carpentino* v. *Transport Ins. Co.*, 609 F.Supp. 556, 562 (D.Conn.1985) (allegations of willful employer misconduct may be enough to escape exclusivity bar).

But this Court need not canvas the meaning of "intentional tort" throughout the Union nor even carefully compare the intent standards under AWPA and Florida law. For the point is that, in the face of a patchwork quilt of state common law remedies, workers' compensation schemes and safety regulations, Congress determined that state law in all its manifold forms was inadequate to protect migrant workers or to redress their injuries. That is why federal legislation and a private federal right of action were enacted.

D. The Real "Anomaly" Congress Could Not Have Intended Is To Have Enforcement Of AWPA Subordinated To And Blunted By A Bewildering Array of State Workers' Compensation Laws.

AWPA was born of Congress' determination that states could not or would not prevent exploitation of farmworkers and ensure sufficient compensation for their injuries. Section 1854 embodies Congress' recognition that administrative and even criminal enforcement by the Department of Labor (or state regulators) was woefully inadequate to ensure compliance with the law. A private cause of action was essential.

Petitioner would nonetheless return migrant and seasonal farmworkers to the very conditions of lax enforcement and miserly, haphazard compensation that AWPA was written to rectify. Reversal of the judgment below would leave the enforcement of federal law and the availability of federal remedies dependent upon the vagaries of state law, thereby frustrating both of § 1854's ends. This is well illustrated by the order of the district court in this case, which denied respondents *all* federal relief on the vehicle safety violations they alleged — actual damages, statutory damages and injunctive relief. The district court ruled that "liability for Workers' Compensation benefits is an exclusive remedy and that no additional remedy is available" under AWPA. CPA 19a.

Although that result constitutes a serious and unacceptable obstruction of congressional will, the particular circumstances of this case must not be allowed to obscure the fact that Regulation 500.122(b), which reversal of the judgment below would reinstate, takes an even bigger bite out of AWPA. This regulation is not limited to injuries resulting from *transportation* of farmworkers. It purports to make workers' compensation the exclusive remedy for *all* "loss under this Act in the case of bodily injury or death."[42] If a worker is injured or killed because of a failure to comply with AWPA's *housing* provisions, 29 U.S.C. § 1823 — for example, in a fire caused by structural defects and aggravated by a lack of fire exits or fire extinguishers — the regulation seemingly provides that recovery is limited to workers' compensation. Yet the state compensation regime might not extend benefits for this particular injury, perhaps because of the state's "bunkhouse rule," and the Labor regulation would limit the worker to the compensation to which he is entitled under the state's workers' compensation regime — in this case, nothing.

Regulation 500.122(b) would work similar injustices in other circumstances where injured farmworkers would be *covered* by workers' compensation but would, for various reasons, fail to qualify for benefits — for example, by missing fewer than the threshold number of days of work — or would be limited to a niggardly schedule of one-time benefits despite suffering a grievous injury that nevertheless did not, for a migrant farmworker, constitute a permanent disability. A state workers' compensation board might well find that, even after losing an eye or several fingers or suffering mild brain damage, a migrant worker could still pick oranges or harvest lettuce. Under petitioner's reading of the law, such victims would be denied relief under AWPA and would be relegated to whatever state workers' compensation provided — be it little or nothing.

The regulation raises the further prospect that federal damage actions for intentional violations of AWPA would be barred even if state law, because of the exception for intentional torts, would allow a common law tort action in state court. This would

[42] Indeed, the Fourth Circuit Court of Appeals has already held that state workers' compensation excludes relief under AWPA for other work-related injuries, such as being sprayed with toxic pesticides while in the fields. *Roman v. Sunny Slope Farms*, 817 F.2d at 1120; CPA 29a.

lead to the absurd result that a state exclusivity provision incorporated into federal law would restrict the jurisdiction of federal courts more than that of the state's own judicial tribunals!

The only way to avoid this multitude of anomalies would be for this Court to put a substantial judicial gloss on Regulation 500.122(b), interpreting it to mean that AWPA statutory and actual damages are barred *not* whenever "a State workers' compensation law is *applicable*," § 500.122(b), but only when workers' compensation benefits *would be awarded*. That in turn would lead to still further anomalies. For example, if a worker needed seven lost work-days to qualify for workers' compensation, a worker who missed only six days of work could claim full actual or statutory damages under AWPA, while a worker injured in the very same accident but who missed eight days or two weeks would find his recovery limited to workers' compensation benefits.

Of less dire consequence to injured farmworkers but of great immediate interest to this Court are the problems of judicial administration and application posed by the regulation and by petitioner's reading of AWPA. Every time suit was brought for damages under § 1854, the federal courts would be compelled, as a preliminary matter, to investigate the particular state workers' compensation law and the particular accident in order to make a bewildering array of determinations necessary to federal consideration of the claim.[43] It is no answer to

[43] Among others, these required determinations would presumably include:
(1) whether the employer participated in the workers' compensation scheme;
(2) whether the injured employee had elected to participate in the scheme — in several states, farmworkers may opt out of the state workers' compensation scheme and retain their common law tort remedies regardless of their employers' wishes. Arizona, Massachusetts, Nebraska and Rhode Island allow such employee opt-outs. *See* Employment Standards Administration, U.S. Dept. of Labor, State Workers' Compensation Laws, Table 3 (1989) ("1989 DoL Report");
(3) whether the employee had worked enough hours for that employer or for that year to be covered, and whether the employer had enough employees that year on the payroll or had paid enough to employees in the previous quarter to qualify for coverage under the scheme — many states exclude farmworkers from workers' compensation if they count as part-time employees or if their employer does not annually make use of a sufficient number of man-hours of migrant labor. Among the states using diverse standards along these lines are Alaska, Florida, Illinois, Iowa, Michigan, Oklahoma, Texas, Utah and Vermont. *See* 1989 DoL Report, Table 3;
(4) whether there was an exclusivity provision;
(5) whether there was an exception thereto for intentional torts;
(6) what the standard for intent was and whether that exception was applicable to the facts of the instant case;
(7) whether the employee had been injured incident to his work;
(8) whether the employee was doing the particular sort of farm labor covered by the scheme — Wyoming and South Dakota limit coverage to workers engaged in "power farming" or the operation of heavy machinery. *See* 1989 DoL Report, Table 3;
(9) whether the employee met any other requirements for coverage under the scheme — for example, North Carolina limits coverage to agricultural extension service employees and Georgia's scheme covers only state prisoners engaged in farm labor. *See* 1989 DoL Report, Table 3;
(10) whether, despite coverage of the employee under the scheme, the nature of the injuries and extent of disability or worktime lost were insufficient to entitle the employee to benefits; and
(11) if the AWPA claim were a class action for statutory damages, which employees (if any) had already suffered injury and were therefore barred by the regulation, and how that determination would affect the status of the remainder of the class plaintiffs.

say that the determination of whether a particular state's workers' compensation scheme covers an injured employee is a simple matter of asking whether that employee has already collected workers' compensation benefits. For no exhaustion of administrative remedies is required under AWPA, and an injured worker could forego applying for workers' compensation altogether or apply only after bringing an AWPA suit. Thus federal courts would routinely be required to struggle with a perplexing tangle of state law issues. As the Labor Department informed Congress when testifying against a proposed workers' compensation exclusivity defense in 1978, it would be "administratively infeasible to incorporate such varied and unclear State laws" into the federal statutory regime. *See supra* note 5.

Finally, there is the very real question of whether AWPA's safe transportation and housing standards will mean *anything at all* in those states where farmworkers injured by violations thereof cannot sue in federal court and can recover only workers' compensation benefits. Although farmworkers can still, even under petitioner's theory of AWPA, seek statutory damages for violations of the Act so long as they sue before they

have been injured in any way, PB 22-23; AFBF Br. 23, it is obvious that the most common (and most important) occasion for enforcing AWPA's safety standards will arise when someone has been hurt. Payment of workers' compensation insurance premiums is no deterrent for an employer who finds violation of AWPA convenient and economical. As the court below noted, " 'it ought not to be cheaper to violate [the Act] and be sued than to comply with the statutory requirements.' " CPA 12a (quoting *Beliz* v. *W.H.McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir. 1985)).

Unless the judgment below is affirmed, enforcement of AWPA's safety standards will be similarly hobbled by the elimination of injunctive relief when a worker has been injured. The district court in this case threw out *all* of respondents' claims for relief — both legal and equitable — with respect to the vehicle safety violations. CPA 19a. That comports with the Labor Department regulation that petitioner would have this Court reinstate, for § 500.122(b) declares, without an exception for injunctive relief, that "workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." But surely it is in those cases where violations of AWPA safety standards have *already* caused the loss of life or limb that the need for an injunction requiring future compliance with federal law is greatest. It "would be a *tour de force* of statutory misinterpretation," *Sun Ship*, 447 U.S. at 721, to construe AWPA to deny migrant farmworkers injunctive relief in precisely those instances where they clearly need it most.

Petitioner and its *amici* reassure this Court that administrative enforcement by the Department of Labor, along with the trickle-back economic pressure of a bad workers' compensation accident rate, will be sufficient to deter AWPA violations by agricultural employers. PB 22-23; AFBF Br. 22-23. This argument is irretrievably stale: those very enforcement mechanisms were found grossly inadequate by Congress in 1974 and again in 1983 when it enacted a private right of action for farmworkers. Moreover, petitioner overlooks the fact that even if, arguendo, some enforcement of AWPA can continue under a

§ 1854 that has been largely scuttled by state law, it is beyond cavil that petitioner's reading of the Act would torpedo Congress' other aim of ensuring that "full actual damages would be awarded in every case," 128 Cong.Rec. 32,463 (1982) (statement of Sen. Hatch).

CONCLUSION

Petitioner's dissatisfaction with the contours of congressional policy judgments cannot justify importing new substantive state law defenses into a federal cause of action or justify stripping federal courts of remedial jurisdiction that Congress has expressly conferred. That the Executive Branch was prepared in 1983 to legislate to the contrary — in a regulatory enactment that the Executive does not now defend — cannot justify a different result.

For the foregoing reasons, the judgment of the court below should be affirmed.

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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Respondents and their *amici* attempt to obscure the simple nature of this case by characterizing our claim as one of "reverse pre-emption" (Resp. Br. 14) that would require federal courts to apply a "bewildering array of state workers' compensation laws." (*Id.* at 44.) They portray the private right of action for personal injuries as the "centerpiece" (*id.* at 1) of AWPA, and claim that the Department of Labor's regulation, if upheld, would "eliminate the private enforcement mechanism of § 1854." (*Id.* at 32.) To paraphrase respondents (*id.* at 19), the oft-repeated "crux of [their] entire argument" is that pre-1982 legislative history demonstrates that the Department of Labor's interpretation was "anathema to Congress" (*id.* at 25) and that the regulation improperly attempts to "engraft into Congress' statute * * * the precise workers' compensation exclusivity defense * * * [that] Congress *specifically rejected*" in 1978. *Id.* at 15, 25, 27-28, 29. None of these assertions can endure close scrutiny.

To begin with, pre-emption ("reverse" or otherwise) is not the central issue in this case. This case instead is about statutory construction and deference to administrative agency interpretation. The court of appeals, affording absolutely no deference to the Department of Labor's regulation, improperly struck down the perfectly reasonable, contemporaneous interpretation by the administrative agency that drafted the statute and that Congress charged with its implementation. The regulation is simple in operation, has been on the books for nearly seven years without causing the parade of horribles respondents' hypothesize, and does not depend at all in its operation on the exclusive remedy provisions of state law.

In addition, the regulation does not "gut" enforcement of AWPA; rather it places an entirely sensible limitation, expressly contemplated by Congress, on one of the ways

in which the statute is to be enforced. The language and structure of the statute, the legislative history, and years of experience under both AWPA and FLCRA all make a mockery of respondents' claim that Congress intended to create a private federal tort action for personal injuries as the "centerpiece" of either law. Such private tort actions have *not* been a significant element of AWPA enforcement and were not a significant element of FLCRA enforcement. To the contrary, we are unable to locate *any* reported decisions under FLCRA involving private actions by farm employees for personal injury damages, and this is apparently only the second such case reported under AWPA. Surely, if respondents' federal tort action was central to enforcement of both laws, one would expect many more reported decisions. And if the Department of Labor's 1983 regulation devastated the centerpiece of the statute, as respondents claim, it would have been challenged long ago.

Furthermore, there is nothing to the argument that the Department of Labor's regulation is precluded by Congress's rejection of an amendment to an earlier statute in 1978. Even if the legislative history of FLCRA were relevant to the interpretation of the entirely new statutory structure of AWPA, the 1978 amendment proposed to do *exactly* what Congress did when it enacted AWPA in 1982. The amendment would have relieved agricultural employers of the obligation to carry duplicative liability insurance when transporting workers covered by workers' compensation. That proposal—rejected in 1978 because of the lack of a dependable employer-employee relationship in the labor contractor business and *not* because workers' compensation exclusivity was "anathema" to Congress—became law under AWPA in 1982. Under the circumstances, the 1978 legislative history, if anything, provides additional reason to defer to the Department of Labor's sensible interpretation of AWPA.

As the country's leading authority on workers' compensation observed in the course of his harsh criticism of the court of appeals' decision, "[i]t is difficult to believe that Congress meant to [give migrant workers] rights superior to all other workers." 2A A. Larson, THE LAW OF WORKMEN'S COMPENSATION 27 (1989 Supp.). It is far easier to accept the interpretation of the statute suggested by Section 1841(c) and rendered at the time the statute was enacted by the agency that sponsored and drafted the law and was charged by Congress with its implementation: that migrant workers be placed on an equal footing with other employees and be prohibited from suing their employers for damages for job-related injuries covered by workers' compensation.

Respondents' sweeping argument, if accepted, would give migrant workers a shallow victory indeed. The workers in this case would win the right to sue for their injuries under AWPA, but countless more workers would stand to lose their far more valuable workers' compensation coverage and their right to automatic compensation without proof of fault. If respondents prevail, farm employers in states where workers' compensation is elective will have little incentive to provide coverage, and farm groups in other states would certainly pressure their legislatures to repeal mandatory coverage. Thus a valued benefit will be lost to farmworkers (and not merely to those involved in motor vehicle accidents) and a major purpose of AWPA—to promote workers' compensation coverage—will have failed.

I. The Court Of Appeals Failed To Give Proper Deference To The Department Of Labor's Contemporaneous Interpretation Of AWPA

A. As respondents acknowledge (Resp. Br. 28), analysis of this case must begin with *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), and the

Court's more recent decision on deference to administrative agency interpretation, *NLRB* v. *Food & Commercial Workers*, 484 U.S. 112 (1987). The first step is to determine whether congressional intent is "clear" and "unambiguous" on the "precise question at issue." *Chevron*, 467 U.S. at 843 n.9.

Contrary to respondents' assertion, it is far from clear that Congress intended to place migrant workers in a better position than other employees by allowing them to sue their employers for damages for on-the-job personal injuries when those injuries were covered by workers' compensation. What evidence there is strongly points in the opposite direction: Section 1841(c) exempts employers from the statute's vehicle insurance requirements if workers are transported only under circumstances where they are covered by workers' compensation, and the only congressional report on the bill assured farmers that no additional insurance would be necessary under such circumstances. H.R. Rep. 97-885, 97th Cong., 2d Sess. 20 (1982) (hereinafter, "*House Report*").

Respondents would have this Court believe that Congress told agricultural employers that they need not bother to carry additional insurance to cover accidents *just like the one seen in this case*, but that they would still be subject to extraordinary liability under circumstances where other employers would be covered by workers' compensation. There is no evidence that Congress intended such a trap for unwary employers. The intent of Congress on the issue is *at least* unclear; in fact, it seems to clearly favor the interpretation given by the Department of Labor.

B. In these circumstances, the Department of Labor's contemporaneous interpretation is entitled to deference "as long as its interpretation is rational and consistent with the statute." *NLRB* v. *Food & Commercial Workers*,

484 U.S. at 123. The Court will "also consider the consistency with which an agency interpretation has been applied, and whether the interpretation was contemporaneous with the enactment of the statute being construed." *Id.* at 124 n.20.

Respondents raise several points in their attempt to prove that the regulation is inconsistent with AWPA. First they claim that *Chevron* requires that there be an express delegation of authority to the Secretary and an identifiable "gap" to fill before the agency can issue any interpretative regulations. Resp. Br. 30. The full passage from *Chevron* that respondents selectively quote from belies those notions (467 U.S. at 843-844; emphasis added to portion deleted by respondents):

> If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. *Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of the agency.*

But even if *Chevron* did require express delegation of authority and an explicit gap in every case, this case would meet those criteria. The gap to be filled is the answer to the question on which congressional intent is unclear: whether Congress intended to permit personal injury suits by workers injured on the job and covered by workers' compensation. And the delegation to the Secretary could hardly have been more clearly expressed. See 29 U.S.C. §§ 1841(a)(2), 1841(d), 1861.

Respondents would have the Court believe that neither Section 1861 (which gives the Secretary of Labor full au-

thority to issue rules and regulations to carry out the entire statute) nor Section 1841 (which *requires* the Secretary to promptly issue regulations implementing the motor vehicle safety and insurance provisions of AWPA) authorizes any regulation that would restrict in any manner the private right of action under Section 1854. Resp. Br. 31-34. But Section 1861 expressly grants the Secretary broad authority to issue regulations governing the entire statute.

Furthermore, respondents' argument carefully ignores the nature of the claims they have brought against petitioner. The claims that are at issue here are all claims under Section 1841, which governs motor vehicle safety, and not merely insurance as respondents imply. Respondents alleged that petitioner transported them in an unsafe motor vehicle *in violation of Section 1841(b)*. J.A. 7. Their private action under Section 1854 is thus a claim under Section 1841(b). Sections 1841(b) and (d) expressly require the Secretary to issue regulations governing motor vehicle safety claims. Section 1841(b) mandates that in issuing such regulations, the Secretary consider any "undue burden" the rules might impose on farm employers. The Department of Labor regulation at issue in this case certainly comes well within the Secretary's express regulatory authority. And it clearly would impose an "undue burden" on farm employers to leave them exposed to personal injury suits under circumstances where other employers would be completely covered by workers' compensation.

Moreover, the statute expressly authorizes regulations "to protect the health and safety of migrant and seasonal workers." 29 U.S.C. § 1841(b)(2)(A). Implicit in both Section 1841(c) and the regulation is the determination that the health and safety of such workers would best be protected by affording them the protection given other employees: the no-fault, immediate recovery system of workers' compensation. The law and the regulation give farm employers a powerful incentive to elect workers' compensation coverage where it is elective. And they reduce farm opposition to state legislative changes making coverage available to migrant workers.[1] A holding that would permit farmworkers to sue for personal injuries that are covered by workers' compensation would reverse those beneficial incentives. Farm employers would gain little or nothing by electing to maintain workers' compensation coverage, and state legislatures would inevitably respond to pressure from the farm lobby to exclude workers covered by AWPA from mandatory workers' compensation coverage.[2]

C. Respondents also contend that the regulation is inconsistent with AWPA because it would "eliminate the private enforcement mechanism of § 1854" and would be "tantamount to an assertion that Congress put a not entirely-reformed fox [the Department of Labor] in complete charge of the henhouse." Resp. Br. 32. Thus respondents strike a theme that they repeat throughout their brief: that the private right of action is the "centerpiece" of AWPA, that it was a critical part of the bill because the Department of Labor could not be trusted to enforce AWPA, and that the regulation guts the private right of action.[3] None of these points are correct.

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[1] Indeed, in 1984 the Texas legislature responded to AWPA by amending its workers' compensation law to cover migrant and seasonal workers. Tex. Civ. Stat. Art. 8306, § 25; Acts 1984, 68th Leg., 2d C.S., p. 562, ch. 33, § 2.

[2] The Florida legislature has been very quick to react to any judicial erosion of the exclusivity rule in that state. For example, in *Streeter* v. *Sullivan*, 509 So. 2d 289 (1987), the Florida Supreme Court held that plaintiffs could circumvent the exclusive remedy rule by suing corporate officers of their employers on a gross negligence theory. Within months, the legislature amended the Workers' Compensation law to eliminate that tactic. Fla. Stat. § 440.11 (1988).

[3] In support of that theme, respondents state that "AWPA's private right of action was enacted in the face of stiff opposition from agricultural employers." Resp. Br. 17. That is a flagrant distortion; the major employer groups all supported AWPA. The citation respondents give for this point relates only to the earlier, far different statute (FLCRA), and not to AWPA.

1. To begin with, in portraying congressional distrust of the Department of Labor as a critical factor in the passage of AWPA (and as a factor that cuts against the regulation), respondents ignore both the nature of the bill and the nature of that distrust. AWPA was an *Administration Bill*, drafted, negotiated and lobbied for *by the Department of Labor*. *House Report* at 20; *Hearing on the Migrant and Seasonal Worker Protection Act*, 97th Cong., 2d Sess. 43-50 (1982) (hereinafter "*1982 Hearings*"). All of the snippets of (mostly pre-1982) legislative history respondents cite do not negate the fact that "[o]n September 1, 1982, the Secretary of Labor transmitted [the bill] to Congress," that it was referred to Committee and formally introduced and "sponsored" later that month, and that *the Department of Labor's bill* was subsequently passed without amendment. *House Report* at 20-21. To argue that the "centerpiece" of the Department of Labor's own bill was the private right of action because the statute reflected a strong distrust of the Department of Labor ignores the fact that this was a bill *proposed and drafted by the Department of Labor*.

The frustration with the Department of Labor that led directly to AWPA was not primarily over its failure to enforce the statute for the benefit of workers, but instead over its *overzealous enforcement* of technicalities against employers and particularly its imposition on fixed-situs farmers of requirements intended and appropriate only for labor contractors. In fact, in late 1979, 52 Senators signed onto a letter harshly critical of the Department and proposing an amendment to FLCRA that would completely exempt fixed-situs farmers and producers from the statute. The following year, such a bill passed the Senate but did not come to a vote in the House. See *1982 Hearings* at 44-45, 59. AWPA was a reaction to that frustration. Other than a statement by Rep. Ford three months after AWPA was passed in the House (126 Cong. Rec.

H 10456 (daily ed. Dec. 20, 1982)), there is absolutely no indication that anyone at the time thought that the private right of action was in any sense the critical portion of AWPA.

2. Moreover, no fair-minded reading of the statute and its legislative history would support respondents' claim that the private right of action in general, or more particularly any right of action for personal injuries, was the "centerpiece" of AWPA. In setting out the "five basic principles" encompassed by the Act (*1982 Hearings* at 45), the Administration spokesman did not even mention the private right of action. The hearings, congressional reports and floor speeches centered around the need to distinguish between fixed-situs agricultural employers and labor contractors and between migrant and seasonal workers, and the need to end abusive treatment of farm employers. The primary focus of the statute itself and its history was on disreputable employers (most particularly farm labor contractors) who cheated workers out of their wages or enticed them to work with false promises. Even in the brief specific discussions of the private right of action, primary emphasis was placed on statutory damages ($500 per plaintiff per violation), primarily for wage payment, housing and recordkeeping violations. See *House Report* at 1-12; *1982 Hearings* at 43-56; 126 Cong. Rec. 26,008-26,010; 126 Cong. Rec. 32,458-32,466.[4]

Respondents' assertion that the private right of action was the "centerpiece" of the law is supported only by

[4] Respondents' claim that a private right of action for personal injuries is essential to the Act is also disproved by experience. Of the scores of reported cases under Section 1854 and its FLCRA predecessor, only two—this case and *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), cert. denied, 484 U.S. 855 (1987)—involved personal injury claims. *Roman*, of course, held that an employee covered by workers' compensation could not sue his employer under AWPA for job-related injuries.

a statement by Rep. Ford made three months after the House passed the bill. 126 Cong. Rec. H 10456 (daily ed. Dec. 20, 1982). But the Department of Labor, not Rep. Ford drafted the bill; Rep. Ford was not among the original sponsors of the bill in the House (see 126 Cong. Rec. H 6979 (daily ed. Sept. 14, 1988)); and the cited speech shows that Rep. Ford did not believe the private right of action in the bill went far enough. *Ibid.* Rep. Ford did not even attend the hearings on AWPA (see *1982 Hearings* at 1) and did not speak during the debate when the bill was passed. See 126 Cong. Rec. 26,008-26,010. *Ibid.* His after-the-fact statement is hardly a persuasive bit of legislative history. Moreover, when the private right of action was added to the predecessor statute (FLCRA) in 1974, the House version—as to which Rep. Ford *was* the lead sponsor—would have only permitted suits for statutory damages up to $500, and *not* suits for actual damages. 120 Cong. Rec. 35,470 (Oct. 16, 1974). Although the 1974 legislative history is not relevant to AWPA, it is interesting to note that what respondents claim was the "centerpiece" of that statute (the right to sue for actual damages) was added to the bill at the very last minute and without explanation. See 120 Cong. Rec. 35,470 (Oct. 11, 1974) (favorable final vote on House version of bill permitting suits only for statutory damages up to $500); 120 Cong. Rec. 35,900 (Oct. 16, 1974) (final Senate vote purportedly accepting the House version but adding the "actual damages" language without explanation).[5]

[5] The version passed by the Senate on October 16, 1974, was vetoed by the President later that month because of its inclusion of some unrelated amendments to the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"). See H. Doc. 93-380 (veto message). The bill was reintroduced in virtually identical form (except for the deletion of the LHWCA provisions) and was passed by both houses later that fall. See H.R. Rep. 93-1493, 93rd Cong., 2d Sess. 3 (1974); S. Rep. 93-1295, 93rd Cong., 2d Sess. 5 (1974).

(Footnote continued on following page)

3. Most critically, it is not at all true that the Department of Labor's regulation would "eliminate" or even significantly impair the private right of action under Section 1854. The regulation applies to only one small category of cases—those involving personal injuries caused by AWPA violations.[6] And even in that category of cases, the regulation does not preclude a private action based on the alleged underlying AWPA violations. Workers in those cases would have the right to bring the same action that they regularly bring against employers claiming safety, wage payment or recordkeeping violations. The regulation only bars an additional recovery under AWPA for bodily injuries. In that regard, the district court might have gone too far in dismissing all of respondents' claims relating to the motor vehicle accident.

Respondents' dire predictions simply do not reflect reality. AWPA enforcement has not collapsed in the nearly seven

[5] *continued*
Neither the House Report nor the Senate Report on the bill that eventually became law even mentioned the "actual damages" language; both characterized the private right of action as simply allowing the award of statutory damages up to $500 for each violation. H.R. Rep. 93-1493 at 11; S. Rep. 93-1295 at 10. To accept respondents' position the Court thus must believe that neither chamber felt it necessary to even mention the "centerpiece" of the statute!

[6] Respondents make much of the fact that Section 1854 only provides a private right of action for *intentional* violations of AWPA and that state law exclusivity provisions do not apply to intentional violations. Resp. Br. 40, 43 & nn.40-41, 44. But they fail to mention that under AWPA, a violation is regarded as "intentional" whenever the underlying act or omission is "conscious or deliberate"; an intent to violate the act is not required. See, e.g., *Salazar-Calderon* v. *Presidio Valley Farmers Ass'n*, 765 F.2d 1334, 1345 (5th Cir. 1985), cert. denied, ; U.S. 1035 (1986); *De La Fuente* v. *Stokely-Van Camp, Inc.*, 713 F.2d 225, 238 (7th Cir. 1983). The exclusive remedy provisions of workers' compensation laws do not apply only when it is shown that the employer had an actual intent to injure the employee. See 2A A. Larson, THE LAW OF WORKMEN'S COMPENSATION § 68.13.

years the regulation has been in effect. Moreover, personal injury claims against farm employers were not significant elements of private actions even under the previous statutory structure, FLCRA, where there was no similar regulation. In fact, we have been unable to locate even a single reported decision under FLCRA involving such a claim.

Rather than pursuing claims that are at the core of AWPA enforcement, respondents are attempting to break new ground not envisioned by Congress and certainly not necessary for the effective enforcement of the statute. Farmworkers continue to vigorously augment the Department of Labor's enforcement of AWPA through private actions for statutory damages, injunctive relief and other equitable relief. But farmworkers are not placed in the inequitable and unsupportable position of being able to sue their employers for damages for bodily injuries which are covered by workers' compensation. The fair and sensible contemporaneous interpretation of the law should not be disturbed.

D. The Court should pay no heed to respondents' suggestion that the regulation is entitled to reduced deference because it was drafted "in haste" (Resp. Br. 11-12) and was "squirreled away" amidst "hundreds of AWPA regulations." (*Id.* at 12-13, 32 n.27.) The regulations were drafted under the supervision of Deputy Undersecretary Collyer (assisted by his associate Craig Berrington) and Wage and Hour Administrator Otter. 48 Fed. Reg. 15,805. As the legislative history demonstrates beyond dispute, these men—particularly Berrington—drafted, negotiated and lived with AWPA for 18 months prior to its passage. *1982 Hearings* at 50. The bill was passed in the House in September, 1982, and in the Senate (after little debate and no significant opposition) in December, 1982. Interim regulations were not issued until April 12, 1983. That hardly seems a rushed schedule for the preparation of

regulations by the individuals who wrote the bill and were so familiar with it for so long. And the regulations were hardly voluminous. They covered just 21 pages in the Federal Register (48 Fed. Reg. 15,806-15,827) and did not number in the "hundreds."

Furthermore, Section 500.122(b) was not only not "squirreled away", but it was *clearly stated in the four-page summary to the regulations* (48 Fed. Reg. 15,803):

> The regulations state further that where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

Nobody who even read the brief summary, no less the regulations themselves, could have possibly missed the regulation. It is simply nonsense to suggest, as respondents do, that the Department of Labor somehow slipped this regulation past the concerned parties (including farm labor groups) who commented extensively on other provisions. Everybody concerned knew about the regulation and no one objected because the regulation merely implemented the accepted interpretation of the statute.[7]

---

[7] Respondents assert that "[i]t is impossible to know whether * * * the Department of Labor received any comments objecting to [the regulations] * * * because the comments have, according to the Department, been lost." Resp. Br. 13 n.10; 32 n.27. But in issuing the final text of its regulations, the Department indicated that it received a total of 61 comments on all of the regulations, and that it was "summariz[ing] the substantive comments which were received." 48 Fed. Reg. 36,736. It did *not* mention any comment relating to Section 500.122(b), so the only plausible assumption is that no substantive objections were filed.

Although we question the propriety of respondents' citation of its telephonic investigation (Resp. Br. 13 n.10; 32 n.27), in defense we followed their lead and telephoned former Associate Deputy Undersecretary Craig Berrington, the driving force behind AWPA.

(Footnote continued on following page)

Moreover, respondents' claim that the Department of Labor sneaked this regulation past the concerned parties is also flatly inconsistent with its claim that the private right of action for damages was the "centerpiece" of AWPA and that the regulation greatly impairs the private right of action. If respondents have their way, we must believe at the same time that the regulation dealt a mortal blow to AWPA, and that the numerous farm labor organizations nevertheless did not notice the provision in the regulations even though it was highlighted in the summary. If the regulation was "anathema" to Congress and fatal to the "centerpiece" of the statute, the farm labor groups and members of Congress would have noticed and screamed foul. Yet no protest appears on the record, and no comments on this provision were even mentioned in the rather thorough discussion of the comments received that was published in the Federal Register when the final regulations were issued. The only reasonable explanation is that the supporters of the bill did not object because the regulation was not objectionable.

E. Respondents construe the fact that the Solicitor General has not filed an *amicus* brief in this case as proving that the Department has affirmatively "declined" to defend its regulation. But as even respondents must admit (Resp. Br. 33), we do not know why the government has not filed a brief, and there has certainly been no official or unofficial indication that the Department affirmatively decided not to support its regulation. More importantly, this is *not* a case where the Department's position on an issue must be set out in a brief or other transitory

[7] *continued*
See *1982 Hearings* at 43, 50, 57. Mr. Berrington informed us that indeed there were no objections to Section 500.122(b); that it was understood that the statute would be interpreted as the regulation interpreted it; and that the intent of Section 1841(c) was to encourage farm employers to elect workers' compensation coverage and to encourage states to require such coverage.

document. See, e.g., *Mead Corp.* v. *Tilley*, 109 S. Ct. 2156, 2164 n.11 (1989); *Container Corp.* v. *Franchise Tax Board*, 463 U.S. 159, 195-196 (1983). Even in those cases there is serious doubt as to whether the government's silence should be interpreted to reflect a change in position. *Container Corp.* v. *Franchise Tax Board*, 463 U.S. at 204 (Justice Powell, dissenting). But here the Department of Labor has issued a formal regulation after notice and comment. It has not begun any new rulemaking proceedings or in any way expressed an intent to abandon the regulation. The Department can hardly be regarded as having withdrawn that regulation merely because it did not file a brief in this case. Certainly, the government is not required to file a brief whenever one of its regulations is called into question in a case to which it is not a party.[8]

II. The Pre-1982 Legislative History Is Not Relevant To This Case And Does Not Support Respondents' Position In Any Event

In apparent recognition of the fact that the Department of Labor's interpretation of AWPA would be entitled to deference if only the language and history of that statute were taken into account, respondents throughout their brief invoke the legislative history of the prior statutory structure, FLCRA. Resp. Br. 1-7, 9 n.9, 27-28 & n.20. Through selective patching of phrases out of context, they misquote the Department of Labor spokesman (Deputy Undersecretary Collyer) as characterizing AWPA as merely a revision, clarification and reenactment of FLCRA (*id.*

[8] Respondents seek to contrast the government's role in this case with that it took in *Chevron*, where respondents say the government presented the oral argument for Chevron. Resp. Br. 32 n.26. What respondents neglect to mention is that the United States was a *party* in *Chevron*, which was a consolidation of three cases including *Ruckelshaus, Administrator, Environmental Protection Agency* v. *Natural Resources Defense Council*. See 467 U.S. at 837 n.*.

9 n.9 & 28 n.20) and they argue that AWPA's legislative history includes that of FLCRA. *Id.* at 27-28. Most particularly, they claim that an attempted amendment of FLCRA in 1978 demonstrates that the Department of Labor's interpretation was "anathema to" and "specifically rejected" by Congress. *Id.* at 15, 25.

1. This argument has at least two fatal flaws. First of all, AWPA was not a mere revision or reenactment of FLCRA; instead it repealed FLCRA as a failure and enacted a new law that retained some features of FLCRA, rejected others, and added many new ones of its own. Unlike respondents, we do not need to patch together words out of context to find what Deputy Undersecretary Collyer really said about the bill. He stated his view quite clearly in his prepared testimony (*1982 Hearings* at 45):

> Now, Mr. Chairman, let me describe this consensus bill. *We are proposing a completely new statutory structure.* Our proposal *repeals FLCRA and creates a new law*, the "Migrant and Seasonal Agricultural Workers Protection Act."

Why propose a new statutory structure? Because FLCRA had become a monstrosity and in late 1979, 52 United States Senators joined in a letter to the Department of Labor protesting abusive treatment of farmers under the law. In 1980 a bill passed the Senate that would have effectively repealed (and *not* replaced) FLCRA insofar as it applied to fixed-situs farm employers like the Adams Fruit Company. See *1982 Hearings* at 44-45, 59.

As the *House Report* stated (at 4), "[c]learly a new workable approach and structure are imperative, and [AWPA] achieves that goal." AWPA was enacted "to rectify [the] fundamental problems with [FLCRA]." 126 Cong. Rec. 32,459 (Senator Hatch). FLCRA came to be hated by almost everyone involved; AWPA on the other hand, was a "consensus bill." The legislative history of AWPA does examine the history of FLCRA, but only to

point out that FLCRA's long road to dismal failure had finally come to an end. See 126 Cong. Rec. 26,008-26,009, 32,459, 32,464 (1982); *House Report* at 1-4; *1982 Hearings* at 43-45.

In these circumstances, the legislative history of FLCRA has little relevance to this case. Certainly the rejection of an amendment in 1978 that would have applied primarily to farm labor contractors and not to farm employers—and that was rejected because of the lack of an employment relationship between the contractors and the workers[9]—tells us nothing about what Congress intended in enacting the new law several years later.

2. But even if the 1978 legislative history *were* relevant to AWPA, it hardly amounts to the categorical rejection of the Department of Labor's interpretation that respondents portray. In fact, the 1978 amendment would have done just what Congress expressly did in 1982 as part of AWPA: it would have modified the motor vehicle insurance provision of the law so that the required policies would not be required to cover claims already covered by state workers' compensation law. H.R. 10631, 95th Cong., 2d Sess.; *1978 Hearings* at 3-4, 34. *The 1978 bill*

[9] *See Hearings Before The Subcomm. On Econ. Opportunity Of The House Comm. On Educ. And Labor on H.R. 8232 [and Related Bills]*, 95th Cong., 2d Sess. 56-57 (1978) ("*1978 Hearings*"). Respondents cite other portions of these hearings for the proposition that the Department of Labor opposed the 1978 amendment because workers' compensation benefits were inadequate. Resp. Br. 4-6. But the Department's spokesman (Assistant Secretary Elisburg) clearly demonstrates that the agency's opposition was based on its perception that "the employer-employee relationship may not be established while the agricultural workers are in transit * * *." *1978 Hearings* at 57. Respondents rely primarily on a letter one of Mr. Elisburg's subordinates (Warren D. Landis) sent to a congressman a year before the bill was introduced, but the entire series of correspondence between the Congressman and the Department made it clear that Landis overstated the Department's position particularly as to adequacy of the state benefits. *1978 Hearings* at 5-10.

did not expressly modify in any way the private right of action provision of FLCRA, just as Section 1841(c) does not expressly modify the private right of action provisions of AWPA. Yet everybody understood (and respondents acknowledge) that the modification of the insurance requirement in 1978 was intended to modify the private right of action even though the amendment contained no language to that effect. Similarly, everybody understood that Section 1841(c) of AWPA was intended to restrict the private right of action in 1982. That is why the Department of Labor's regulation making explicit that intent became effective without adverse comment. See n.7, *supra*.

III. Respondents' Position Is Contrary To All Accepted Notions Of How Injured Workers Should Be Compensated

The court of appeals' opinion improperly overturns the reasonable, contemporaneous interpretation of the Department of Labor, the agency Congress entrusted to implement AWPA. In our opening brief, we pointed out the unfortunate consequences that would flow from that court's decision and the fact that it unjustifiably disturbs the historic compromise inherent in workers compensation—and does so in the absence of any real evidence that Congress intended such a result. Many of the arguments respondents make are arguments against the concept of workers' compensation. But the workers' compensation system is well-established and accepted in the United States. It provides medical and wage benefits on a no-fault basis and greatly reduces litigation. There is no reason to believe Congress intended to give migrant and seasonal workers protections beyond those available to other employees. In fact, it is clear that in enacting Section 1841(c) of AWPA, Congress intended to encourage workers' compensation coverage of migrant and seasonal workers.

We make those points in our opening brief, but we could not have made them as well as Professor Arthur Larson, the country's preeminent authority on workers' compensation, did in the latest revision to his treatise (2A A. Larson, THE LAW OF WORKMEN'S COMPENSATION, 27-28 (1989 Supp.):

> The Eleventh Circuit['s decision] * * * ignores the virtually uniform *contra* holding of all the cases * * * in which exclusiveness bar has been applied to a wide assortment of statutorily-created causes of action, both state and federal. The court relies heavily on legislative history said to show that Congress intended migrant workers to have special protection over and above that of other workers. Taking this position was necessary if the court was to distinguish the Supreme Court decision in *United States v. Demko*, 385 U.S. 149 (1966), which held that the Federal Tort Claims Act did not preempt the compensation statute. To hold that it did, said the Supreme Court, one would have to conclude that injured prisoners were given greater protection than other federal employees. It is similarly difficult to believe that Congress meant to create a privileged class, the migrants, with rights superior to all other workers. Surely, it would be enough if migrants were treated just as well as all others. It was the fact that they were not that inspired this legislation. The Eleventh Circuit also relies on the argument that, if the compensation remedy were exclusive, the employer would have little incentive to comply with safety requirements. This is the sort of argument one used to hear fifty years ago against compensation acts generally. It stems from the naive idea that a bad safety record costs the employer nothing. The truth is that, with experience rating, the employer does indeed feel the cost of unsafe practices; indeed, employers with particularly poor records may well be driven out of business. A final problem with the decision is that it raises questions about the nature of preemption itself. Thus, although the court sometimes speaks loosely of preempting the state statute, it

surely cannot mean this, since the effect would be to leave all injured workers without any remedy unless they happened to have a tort cause of action. One can only conclude that the court's idea or preemption is to pick and choose portions of both state and federal statutes, and thus have the best of both worlds. This ignores the most fundamental rationale of workers' compensation, which is that the worker gains the benefits of employer liability without fault as a *quid pro quo* for forgoing tort remedies.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded with instructions to dismiss respondent's AWPA claims for damages due to bodily injuries.

Respectfully submitted,

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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILLS, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICI CURIAE OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF THE PETITIONER

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INTEREST OF THE AMICI CURIAE

The American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-For-Profit Corporation Act of the State of Illinois. It has its principal of-

* The written consents of the parties to the filing of this brief have been filed with the Clerk.

fices in Park Ridge, Illinois. AFBF was founded to protect, promote and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in 50 states and Puerto Rico (including the Florida Farm Bureau Federation), representing more than three and one-half million member families. AFBF farmer and rancher members produce virtually every kind of agricultural commodity produced in the United States. As was noted repeatedly in the legislative history, AFBF played an important role in the drafting of and negotiations over the Migrant and Seasonal Agricultural Workers Protection Act. It was one of the parties to the consensus that led to this important law. See, e.g., 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Robert B. Collyer); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn). The AFBF thus has both a vital interest in seeing that the Act is properly interpreted and a valuable insight into the meaning and intent of the Act.

The Florida Farm Bureau Federation (FFBF) is a non-profit cooperative membership association organized under the laws of the State of Florida. It has its principal offices in Gainesville, Florida. FFBF's purpose is to apply joint and collective efforts to more effectively promote, protect and represent the economic, social and educational interests of farmers and ranchers in the State of Florida. FFBF is comprised of 62 county Farm Bureau organizations with a total membership of more than 70,000 member families in the State of Florida.

The Florida Citrus Mutual (FCM) is a voluntary non-profit cooperative association organized under the laws of the State of Florida. It has its principal offices in Lakeland, Florida. FCM's purpose is to promote, protect and

represent the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida.

The Florida Fruit and Vegetable Association (FFVA) is a non-profit member cooperative organized under the laws of the State of Florida. It has its principal offices in Orlando, Florida. FFVA's purpose is to direct industry policies and protect property interests of member fruit and vegetable growers and operators in the State of Florida.

The National Council of Agricultural Employers (NCAE) is a non-profit membership association organized in 1964 under the laws of the District of Columbia. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. NCAE members in 35 states hire about 75 percent of the U.S. agricultural work force. NCAE participated with AFBF in the development of the Migrant and Seasonal Agricultural Worker Protection Act. See 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer). NCAE members are thus highly concerned with the proper interpretation and implementation of the Act.

The American Farm Bureau Federation, the Florida Farm Bureau Federation, the Florida Citrus Mutual, the Florida Fruit and Vegetable Association and the National Council of Agricultural Employers have a direct interest in the outcome of this case. The court of appeals' ruling that the Act pre-empts the exclusive remedy provisions of workers' compensation laws is contrary to the interest of AFBF, FFBF, FCM, FFVA, NCAE and their members who employ migrant and seasonal laborers in their agricultural operations.

STATEMENT

This case presents the question of whether § 1854 of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1854, provides a separate remedy for workplace injuries sustained by migrant and seasonal workers who are covered by state workers' compensation laws and thus pre-empts the exclusive remedy provisions of such state laws. A regulation promulgated by the Department of Labor at the time AWPA was enacted provided that state workers' compensation is the exclusive remedy for injuries sustained by covered employees, but the court of appeals rejected that interpretation.

1. AWPA regulates activities of farm labor contractors and employers and "assure[s] necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." 29 U.S.C. § 1801. The Act's primary concern is with wage payment, record-keeping, safety standards and financial accountability. It protects agricultural workers by requiring employers and contractors to disclose relevant information and maintain records,[1] to pay wages promptly and in full,[2] to refrain from requiring workers to buy goods or services solely from them,[3] to abide by the terms of their contracts with workers,[4] to provide safe and sanitary housing,[5] and to provide safe, insured transportation for workers.[6]

[1] 29 U.S.C. §§ 1821, 1831.
[2] 29 U.S.C. §§ 1822(a), 1832(a).
[3] 29 U.S.C. §§ 1822(b), 1832(b).
[4] 29 U.S.C. §§ 1822(c), 1832(c).
[5] 29 U.S.C. § 1823.
[6] 29 U.S.C. § 1841.

Section 1841 of AWPA deals with the safety of motor vehicles used to transport migrant and seasonal workers. It requires that such vehicles conform to federal and state safety standards and that vehicle operators carry insurance or post a bond "against liability for damage to persons or property * * *." 29 U.S.C. § 1841(b)(1)(C). Subsection (c) provides that "[i]f an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death * * * [n]o insurance policy or liability bond shall be required * * * if such workers are transported only under circumstances for which there is coverage under such State law." 29 U.S.C. § 1841(c).

The Act is enforced in several different ways. Section 1851 authorizes criminal prosecution of those who willfully or knowingly violate AWPA. In addition, the Secretary of Labor is authorized to bring civil actions in court seeking injunctive relief (29 U.S.C. § 1852) and to assess civil fines in administrative proceedings (29 U.S.C. § 1853). Finally—and most importantly for this case—Section 1854 authorizes any person aggrieved by a violation of AWPA to file suit for equitable relief, actual damages or statutory damages of $500 per plaintiff per violation.

2. AWPA went into effect on April 14, 1983. Two days before then, the Secretary of Labor, as required by § 1841(d), issued interim regulations interpreting and carrying out the provisions of AWPA. 48 Fed. Reg. 15,800. Among those initial, contemporaneous regulations was one providing that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the ex-

clusive remedy for loss under this Act in the case of bodily injury or death." 48 Fed. Reg. 15,819.[7]

3. Respondents, ten farm workers employed by petitioner, sued under § 1854 claiming that they had been injured in a motor vehicle accident while being transported to work in an allegedly unsafe van owned by petitioner. They sought damages for their injuries even though they had already applied for and received workers' compensation benefits. Florida law provides that "[t]he liability of an employer [under the workers' compensation law] shall be exclusive and in place of all other liability of such employer to * * * the employee * * *." Fla. Stat. § 440.11(1). The United States District Court for the Middle District of Florida granted petitioner's motion for partial summary judgment on the ground that the Florida workers' compensation statute provided respondents' exclusive remedy. Pet. App. 19a. The United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 15a.

4. As a threshold matter, the court of appeals declined to afford any deference at all to the Secretary of Labor's regulation providing that workers' compensation is the exclusive remedy for covered employees. The court, citing this Court's decision in *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-448 (1987), held that because the case involved a "question[ ] of statutory construction * * * the deference with which we would ordinarily treat administrative regulations is not appropriate." Pet. App. 5a.

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[7] Permanent regulations, including the exclusive remedy provision without modification, were issued on August 12, 1983. 48 Fed. Reg. 36,736. There was apparently no objection to that provision, which is now codified at 29 C.F.R. § 500.122(b).

Having found no need to defer to the Department of Labor, the court undertook its own, independent examination of the statute, its purposes and its history to determine whether it pre-empted the exclusive remedy provision of state workers' compensation laws. The court acknowledged that AWPA did not expressly deal with the issue. Nor did Congress express an intent to occupy the regulatory field. In fact, as the court noted, AWPA expressly provides that it "is intended to supplement State law, and [does] not excuse any person from compliance with appropriate State law and regulation." Pet. App. 4a (quoting 29 U.S.C. § 1871). The court therefore considered the case under the branch of pre-emption doctrine that asks whether "the state law stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " Pet. App. 4a (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

Contrary to the holding of the Fourth Circuit in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116, cert. denied, 108 S. Ct. 163 (1987), the court of appeals held that the provision for a private right of action was central to the Act's enforcement and would be frustrated if effect were given to state workers' compensation laws. Pet. App. 10a-12a. The court distinguished this Court's holding in *United States* v. *Demko*, 385 U.S. 149, 152 (1966), that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Demko*, the court of appeals reasoned, involved two federal statutes (rather than one federal and one state law), and the legislative history of AWPA, in the court of appeals' view, implied that "Congress intended to provide heightened protection for migrant and seasonal agricultural workers."

Pet. App. 13a. In addition, the court of appeals reasoned that AWPA intended to provide workers with full recovery for their actual damages. Florida workers' compensation law allows for recovery of only two-thirds of back wages. Pet. App. 14a.

In concluding that the 1982 Act pre-empted state law, the court placed considerable reliance on an effort in 1978 to amend the Act's predecessor, the Farm Labor Contractor Registration Act ("FLCRA"), which was repealed by AWPA. The unsuccessful amendment to FLCRA would have given effect to the exclusive remedy provisions of state workers' compensation laws. Pet. App. 7a-8a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although cast in terms of pre-emption, this case is really about statutory construction and deference to administrative agency interpretation. The motor vehicle safety and insurance provisions of AWPA expressly acknowledge the role of state workers' compensation laws and exempt employers from the vehicle insurance requirements if their "workers are transported only under circumstances for which there is coverage under such State [workers' compensation] law." 29 U.S.C. § 1841(c). The Department of Labor—the most important player in the "consensus" that drafted AWPA—published regulations before the effective date of the statute providing that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the exclusive remedy for * * *

bodily injury or death." 29 C.F.R. § 500.122(b). The regulation went into effect without objection. Now, some six years later, the court of appeals, *affording absolutely no deference to the Department of Labor and relying on the legislative history of the wrong statute*, has decided that congressional intent precludes the Secretary of Labor's interpretation.

The court of appeals' interpretation—which is directly contrary to that of the only other court of appeals to consider the issue—is itself contrary to congressional intent. It disregards the consensus nature of AWPA and the even-handed approach of the statute. It subjects farm employers who supported the bill to completely unanticipated liability—liability for which virtually every other employer in the United States is covered by workers' compensation insurance. And it completely ignores the eminently reasonable, contemporaneous interpretation of the administrative agency that drafted the statute, shepherded it through Congress, and is charged by Congress with implementing and carrying out the law. This Court should reverse the court of appeals to preserve the integrity of the administrative process and to reinstate the reasonable interpretation of AWPA that made the consensus possible.

ARGUMENT

I. The Court Of Appeals' Decision Violates Fundamental Principles Of Administrative Law And Improperly Encroaches On The Authority Of The Department Of Labor.

1. AWPA was enacted in 1982 as a consensus bill, with the support and cooperation of the Reagan administration, both parties in Congress, organized labor, migrant farm worker groups, and representatives of agricultural employers including the American Farm Bureau Federation and the National Council of Agricultural Employers. As Robert B. Collyer, Deputy Undersecretary of Labor, testified in support of the bill:

> This cooperative effort has now resulted in a consensus bill, endorsed by the AFL-CIO, the Migrant Legal Action Program and by major agricultural employer organizations, such as the American Farm Bureau Federation * * * and the National Council of Agricultural Employers.

128 Cong. Rec. 32,464. See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn).

The Act superseded entirely the Farm Labor Contractor Registration Act of 1963 ("FLCRA"). That statute had proven ineffective to protect workers and excessively burdensome on employers. AWPA was designed to improve the protection of workers while at the same time eliminating unnecessary administrative burdens and clarifying the responsibilities of employers. As the Department of Labor representative put it:

> The Administration's bill was developed because of concerns raised about FLCRA in the Congress and in the agricultural community among both employer and worker groups. In response to these concerns, we entered upon a cooperative effort to replace FLCRA with a new law better designed to provide needed protections for farmworkers and, at the same time, eliminate unnecessary regulatory requirements that FLCRA has placed on agricultural employers.

128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer). See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,466 (statement of Senator Byrd); 128 Cong. Rec. 26,009 (statement of Representative Erlenborn); 128 Cong. Rec. 26,009 (statement of Representative Panetta).

FLCRA was aimed at correcting some of the problems that occurred when agricultural workers were supplied to farmers by labor contractors (commonly called "crew leaders") who moved with the harvest and supplied labor to several farmers at a time.

> FLCRA was enacted in 1964, following considerable media attention about the conditions of migrant agricultural workers. That concern was centered on crewleaders, who are the middlemen between agricultural workers and farm operators. In this capacity, crewleaders often transport agricultural workers to jobsites; they may also have some supervisory responsibility for these workers in the fields; they may act as a paymaster for the workers or furnish and maintain farmworker housing, collect rent or occasionally supply meals.
>
> Evidence was developed at the time of the original congressional hearings that crewleaders did not always provide these services to farm operators or to farmworkers in an honest way. The original Act was designed, therefore, to prevent exploitation by crew-

> leaders engaged in interstate activities and to improve working conditions of migrant farmworkers who were employed by crewleaders. The Act required all farm labor contractors covered by its provisions to register with the U.S. Department of Labor and to observe certain requirements in dealing with farmworkers and farm operators.

128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).[8] Among the many abuses committed by some labor contractors was transporting workers to farm worksites in unsafe, uninsured vehicles.[9] Because crew leaders often carried neither motor vehicle liability insurance nor workers' compensation coverage, those who were injured in unsafe labor contractor vehicles were often left uncompensated. One of the reforms attempted by FLCRA was to require crew leaders to carry insurance to compensate the workers for any injuries they received during transport.[10]

FLCRA was not a success. In 1974, Congress investigated the problems of migrant workers again and found that FLCRA had not accomplished its objective. The statute was amended to expand its coverage. But the 1974 amendment had the unintended consequence of requiring large numbers of fixed-situs agricultural employers to register as farm contractors and to comply with burdensome regulations inappropriate for their operations. The

[8] See 128 Cong. Rec. 26,010 (statement of Representative Panetta); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn); 128 Cong. Rec. 32,459 (statement of Senator Hatch).

[9] See 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).

[10] See Sen. Rep. No. 202, 88th Cong., 2d Sess. (1964), *reprinted in* 1964 U.S. CODE CONG. & AD. NEWS 3695.

amendment "resulted in great numbers of [fixed-situs] employers being treated as if they were crewleaders with no fixed addresses or financial integrity." 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).[11] By 1982, it appeared to all concerned that FLCRA had imposed "unnecessary regulatory requirements" on fixed-situs agricultural employers and had failed "to provide needed protections for farm workers * * *." *Ibid.*

2. AWPA was intended to provide meaningful protection for agricultural workers while alleviating the harassment of farm employers that occurred under FLCRA and coming to grips with the differences between labor contractors and fixed-situs agricultural employers. The Department of Labor spokesman "emphasize[d] the importance of distinguishing between fixed-situs employers and traditional crewleaders. Nothing under [FLCRA] has caused more bitterness—not to mention more litigation—than the failure to do so." *Ibid.* The Act retains the requirement that labor contractors register with the Department of Labor but makes it clear that this requirement does not apply to fixed-situs employers. 29 U.S.C. §§ 1802(7), 1811. On the other hand, the critical protections afforded to migrant and seasonal agricultural workers—including the requirement of safe, insured transport—apply without regard to whether the workers are employed directly by farm operators or through crew leaders.

By requiring that fixed-situs farm employers (as well as crew leaders) carry liability insurance on the vehicles

[11] See also H. R. Rep. No. 97-885, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S. CODE CONG. & AD. NEWS 4566 (hereinafter cited as "House Report") at 2-4; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).

in which they transport workers, AWPA greatly increased the possibility of "double coverage." As actual employers, farm operators are much more likely than labor contractors to be covered by (or to be eligible to elect coverage under) state workers' compensation laws.[12] In thirteen states plus the District of Columbia agricultural employers are required to carry workers' compensation coverage on the same terms as other employers.[13] Twenty-two other states require such coverage but include some limitations not applicable to other covered employees.[14] And in the remaining fifteen states, agricultural employers may elect to come under the workers' compensation law.[15] In all states, whether coverage is mandatory or elective, once an employer is covered, workers' compensation becomes the exclusive remedy for employee injuries.[16] For employers covered by workers' compensation, the vehicle liability coverage required by AWPA would cover liability for damages for bodily injuries sustained by employees—liability that is also covered by workers' compensation.

Congress expressly addressed the possibility of such double coverage by exempting employers covered by workers' compensation from the vehicle insurance requirements:

> If an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and

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[12] Fixed-situs agricultural employers are also much easier for states to keep tabs on and to ensure that required workers' compensation coverage is maintained.

[13] See 4 A. Larson, THE LAW OF WORKMEN'S COMPENSATION (1989), App. A, Table 4, pp. 4-1 to 4-5.

[14] *Ibid.*

[15] *Ibid.*

[16] See 2A A. Larson at 12-1.

> such employer provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by such State law, * * * [n]o insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

29 U.S.C. § 1841(c)(1). The sponsors of the bill—which was intended to clarify the obligations of farm employers—assured farmers "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.

The statute required the Secretary of Labor to issue regulations to implement the motor vehicle safety and insurance provisions not later than the effective date of the law. 29 U.S.C. § 1841(d).[17] The Secretary, after consulting with the groups involved in the consensus statute, published interim regulations (and requested comments) on April 12, 1983. Among those contemporaneous regulations was one that directly governs this case:

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. § 500.122(b). This regulation became permanent on September 12, 1983, without objection (48 Fed. Reg. 36,736) and has governed the practices of farm employers and insurers ever since.

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[17] See also 29 U.S.C. § 1861 (authorizing the Secretary to "issue such [other] rules and regulations as are necessary to carry out this chapter").

3. In deciding directly contrary to the Department of Labor regulation that state workers' compensation benefits are not the exclusive remedy for bodily injury or death, the court of appeals afforded absolutely no deference to the regulation. The court of appeals explained its position as follows (Pet. App. 5a):

> To determine whether the Florida statute is pre-empted * * * we must ascertain the purposes and objectives of the Act. This involves questions of statutory construction. Thus, the deference with which we would ordinarily treat administrative regulations is not appropriate. See *Immigration and Naturalization Service* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-48 (1987) (" 'The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. . . .' ") (quoting *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)).

The court of appeals' recognized that the legislative history was inconclusive and contained "no debate surrounding [the] language [of § 1841(c)]" (Pet. App. 10a). It also acknowledged that "Congress expressly recognized and left room for state regulations" (Pet. App. 4a), and that it was drawing "inferences" from the overall policy of the statutes. (Pet. App. 13a).[18] Yet it nevertheless concluded

[18] The court found it significant that Congress had not been more explicit on the issue: "Congress was well aware of the possibility of 'double dipping.' *See, e.g., Hearings* at 134. We believe that if Congress had intended to restrict significantly the availability of * * * the private right of action it would have done so directly." Pet. App. 13a. But the "Hearings" the court cites relate to the 1978 amendments to FLCRA, and not to AWPA at all. And in any event, the court's analysis turns traditional notions of pre-emption on their head by requiring a clear statement that state

(Footnote continued on following page)

that to give effect to the regulation and the exclusive remedy provision of Florida workers' compensation law would create "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Pet. App. 12a (quoting *Hines* v. *Davidowitz*, 312 U.S. at 67). The court thus reached its own, independent conclusion that the policies and purposes of the Act would best be accomplished by not giving effect to the exclusive remedy provisions of state workers' compensation laws; the court totally disregarded the opposite conclusion reached by the administrative agency Congress charged with implementing and carrying out the law.

4. The court of appeals' approach is at odds with basic concepts of administrative law and represents an intolerable encroachment on the authority of the Department of Labor. The court misconstrued *Cardoza-Fonseca* as marking a fundamental change in the test set forth in *Chevron*. Other courts have made the same mistake,[19] but it is one that should have been put to rest by this Court's decision in *NLRB* v. *Food & Commercial Workers*, 484 U.S. 112, 123 (1987). See also *id.* at 134-135 (Justice Scalia, concurring); *Theodus* v. *McLaughlin*, 852 F.2d 1380, 1384 (D.C. Cir. 1988).

[18] *continued*
law is *not* pre-empted, rather than clear evidence of pre-emption. As this Court has emphasized, cases such as this one should "start[ ] with the basic assumption that Congress did not intend to displace state law." *Maryland* v. *Louisiana*, 451 U.S. 725, 746 (1981). See also L. Tribe, AMERICAN CONSTITUTIONAL LAW 479-480, 487-491 (2d ed. 1988).

[19] See, *e.g., Union of Concerned Scientists* v. *NRC*, 824 F.2d 108, 113 (D.C. Cir. 1987); *Adams House Health Care* v. *Heckler*, 817 F.2d 587, 593-594 (9th Cir. 1987), vacated, 108 S. Ct. 1569 (1988); *International Union, UAW* v. *Brock*, 816 F.2d 761, 764-765 (D.C. Cir. 1987).

As this Court recently emphasized (*NLRB* v. *Food & Commercial Workers*, 484 U.S. at 123), the proper approach in a case such as this one is first to determine whether congressional intent is "clear" and "unambiguous" on the "precise question at issue." *Chevron*, 467 U.S. at 843 n.9. If it is, that intent must be given effect. *NLRB* v. *Food & Commercial Workers*, 484 U.S. at 123. "However, where 'the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.' " *Ibid.* (quoting *Chevron*, 467 U.S. at 843). The agency's interpretation of the statute is entitled to deference "as long as its interpretation is rational and consistent with the statute." *Ibid.* The court of appeals did not follow that sensible approach, but instead imposed its own interpretation without considering the reasonableness of the Department of Labor's reading.

In this case, to the extent the statute or the legislative history speaks to "the specific issue," it favors the Department of Labor's approach. Section 1841(c) of AWPA expressly recognizes the role of state workers' compensation law. By exempting employers covered by workers' compensation from the vehicle insurance requirements, § 1841(c) at least implies that compensation for bodily injuries would come through workers' compensation and not through AWPA. The legislative history, by assuring covered employers that they need no additional insurance, firmly supports that implication. House Report at 20. The most that can be said in support of the court of appeals' position is that AWPA is "silent or ambiguous" on the "precise question" of whether state workers' compensation laws will provide the exclusive remedy for bodily injury or death. But in that case, the court of appeals should have afforded substantial deference to the Department of Labor's interpretation. The court's inquiry should

have focused on whether the regulation was "rational and consistent with the statute."

Although the court of appeals may have balanced the policy concerns differently and reached the opposite conclusion on its own, it can hardly be maintained that the Department of Labor's interpretation of AWPA is "[ir]rational and [in]consistent with the statute." To the contrary, as we point out above, the regulation is entirely consistent with the statute. Section 1871 expresses an intention not to supplant state law, and § 1841(c) expressly recognizes the role of state workers' compensation laws and at least implies that claims for bodily injury would be handled through workers' compensation.

To give effect to the clear implication of the statute and the assurances of its sponsors is neither irrational nor inconsistent with AWPA. Instead, it is a reasonable interpretation of the law well within the authority and discretion of the Secretary of Labor. As such, it was entitled to deference.

II. Congress Did Not Intend To Supplant The Exclusive Remedy Provisions Of State Workers' Compensation Laws.

As we demonstrate above, the Secretary of Labor's regulation is rational and consistent with the statute. It is thus entitled to deference. But even if it were *not* entitled to deference, the Department of Labor's interpretation should be upheld as best effectuating the intent of Congress. There is no support in the statute for the startling claim that Congress intended to disturb the historical compromise reflected in state workers' compensation laws. It makes no sense to allow employees covered by AWPA to sue for damages caused by bodily injury

when they are covered by workers' compensation for those same injuries. Virtually all other employees in the United States are limited to their workers' compensation remedies; there is no evidence that Congress wanted to give agricultural workers rights in excess of those other employees.

In light of the statutory language, the legislative history and the Secretary of Labor's regulations, it is hardly surprising that the only court of appeals previously to decide the issue held "that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law [that] provides that it is the exclusive remedy, * * * the worker is bound by that provision." *Roman* v. *Sunny Slope Farms, Inc.*, Pet. App. at 29a. That case did *not* involve a motor vehicle injury and thus was not directly governed by the regulation or by § 1841. Yet the Fourth Circuit held that AWPA did not pre-empt the exclusive remedy provision of state law and affirmed the dismissal of the suit.

In *Roman*, the court of appeals noted that § 1871 expressed Congress's intention to supplement, rather than supplant, state law. Pet. App. 25a. It also relied on the fact that § 1841—which was not directly involved in that case but is in this case—exempted employers covered by state workers' compensation laws from the motor vehicle insurance law:

> In addition to demonstrating that Congress did not intend to pre-empt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

Pet. App. 26a. This Court denied certiorari, 108 S. Ct. 163.

As the Fourth Circuit pointed out, a holding that AWPA pre-empts state workers' compensation law would conflict with the approach taken by this Court in *United States* v. *Demko*, 385 U.S. 149 (1966) and *Johansen* v. *United States*, 343 U.S. 427 (1952). In *Demko*, a federal inmate employed in a prison industry was injured on the job and received compensation benefits under a special federal compensation statute, 18 U.S.C. § 4126. He then attempted to sue the government under the Federal Tort Claims Act. This Court considered the federal compensation statute to be the equivalent of a workers' compensation law and held that it provided the plaintiff's exclusive remedy:

> [T]he right of recovery granted groups of workers covered by such compensation laws is exclusive. * * * [W]here "the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." * * * [W]here there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.

Id. at 151-152 (quoting *Johansen* v. *United States*, 343 U.S. 427, 441 (1952). See also *Patterson* v. *United States*, 359 U.S. 495 (1959).

The Fourth Circuit—in a case not governed by the regulation and not requiring deference to the Department of Labor's regulation—thus held that Congress did not intend for AWPA to supplant the exclusive remedy provisions of state workers' compensation laws. That sensible reading of congressional intent—supported by the language of § 1841(c) and § 1871, the legislative history and the consensus nature of AWPA, and this Court's analysis in *Demko*—should be followed in this case. Surely a finding that Congress intended to pre-empt such a traditional,

longstanding state rule should not be lightly made and should require stronger legislative history evidence than that afforded by the court of appeals, if not a clear statement in the statute itself.

The best legislative history evidence the court could come up with did not pertain to AWPA at all but instead related to FLCRA—the statute repealed by AWPA. The court placed particular emphasis on the fact that in 1978 an amendment to FLCRA was proposed that would have explicitly recognized that state workers' compensation benefits were the exclusive remedy for bodily injuries to covered employees. Pet. App. 7a-8a. But that history relates to FLCRA, not AWPA, and FLCRA was a very different law. It regulated farm labor contractors, not fixed-situs farmers, and it was the nature of the labor contractor business and the likelihood the crew leaders would not carry workers' compensation coverage that led the Department of Labor to oppose and Congress to reject the 1978 amendment.[20]

The remaining reasons given by the court of appeals for rejecting the Fourth Circuit's approach are equally unpersuasive. The court's notion that if workers' compensation formed the exclusive remedy for workers' injuries employers "would have little incentive to comply with the transportation safety requirements set out in AWPA and its regulations" (Pet. App. 12a) is misguided. First of all, workers' compensation insurance premiums reflect the injury experience of an employer's workers; if an employer disregards safety requirements, it will suffer direct financial consequences.[21] Moreover, the regulation merely provides that workers' compensation benefits shall be the exclusive remedy for losses due to bodily injury or death; it does not preclude a private action under AWPA to enjoin safety violations or to recover other losses. The Act also provides for civil fines to be imposed by the Department of Labor (29 U.S.C. § 1853) and—in cases of willful or knowing violations—even the possibility of criminal prosecution (29 U.S.C. § 1851). In these circumstances, to say that employers covered by workers' compensation would have little incentive to comply with AWPA is to ignore reality.

In addition, although the court of appeals was certainly correct in stating that AWPA was intended to allow workers to recover their losses, there is absolutely no evidence that Congress intended to allow double recovery, once through workers' compensation and a second time through AWPA. The court's reasoning that a workers' compensation award undercompensates injured workers is precisely the argument this Court rejected in *United States* v. *Demko*, 385 U.S. at 152-153, and ignores the fact that workers' compensation benefits (unlike wages) are not taxed (I.R.C. § 104(a)(1)) and that no deduction is made for the fault of the employees or of third parties.[22]

The court of appeals' reading of congressional intent should be rejected. It relies on the wrong legislative history, is based on mistaken assumptions about the nature

[20] See *Hearings Before the Subcommittee on Economic Opportunity of the Committee on Education and Labor on H.R. 8232 [and other bills] to Amend [FLCRA]*, 95th Cong., 2d Sess., at 8, 56-57 (1978) (statement of Assistant Secretary Donald Elisburg).

[21] 1 A. Larson, at 14 & n.18.

[22] In this case, the employer claimed that respondents were contributorily negligent and several of the respondents also sought and obtained very substantial relief against a third party (the manufacturer of the van's tires). See *Etheridge* v. *Dunlop North America, Inc.*, No. 86-351-CIV-T-(B) (M.D. Fla. 1986).

of AWPA and workers' compensation, and in reality rests not on congressional intent at all but on a policy judgment best left to the Department of Labor.

III. AWPA Should Not Be Construed To Disturb The Role Of State Workers' Compensation Laws.

Agricultural employers in all 50 states and the District of Columbia either are required to maintain workers' compensation coverage (35 states and D.C.) or may elect to do so (15 states).[23] In all of the states, once an employee is covered, the remedies provided by workers' compensation are exclusive. Relying on the language of § 1841 and the regulations issued by the Secretary of Labor, agricultural employers throughout the nation have assumed that their workers' compensation insurance completely covers them for any liability for on-the-job injuries, just as it does for nonagricultural employers. Particularly with regard to liability for employees injured in vehicle accidents, before now there seemed absolutely no reason to obtain additional insurance.[24] In fact, Congress told farmers that "no additional insurance for damages to persons need be obtained." House Report at 20. The court of appeals' decision has made that congressional assurance meaningless and is contrary to the long held view that state workers' compensation statutes are a satisfactory method to compensate individuals for workplace injuries.

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[23] See 4 A. Larson, App. A, Table 4, p. 4-1.

[24] *Amici* have consulted with insurance industry representatives and have learned that in Florida and other states insurance is not available to cover the unanticipated risk imposed by the court of appeals' decision. An uninsured six or seven figure liability judgment would be enough to bankrupt many farmers.

Unfortunately, agriculture can be a hazardous occupation. The National Safety Council reported that in 1987 agricultural workers suffered 160,000 workplace injuries and 1,600 deaths. National Safety Council, ACCIDENT FACTS 97 (1988 ed.). A significant percentage of agricultural injuries resulted from motor vehicle accidents such as the one involved in this case.[25] The states have developed a satisfactory means for handling farm injuries—through workers' compensation laws. Farm employers should be encouraged to carry workers' compensation coverage even in those states where it is not mandatory, but the court of appeals' decision—by depriving farmers of one of the primary benefits of such coverage—gives them the opposite incentive.[26] The decision also places agricultural employers (who must obtain additional insurance in excess of workers' compensation coverage) at a competitive disadvantage with employers in all other industries. Employers in other industries are completely protected by workers' compensation insurance. There is absolutely no evidence that Congress intended this inequity, and this Court should not permit it to continue.

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[25] See Payton, *Farm Injuries*, 15 EMERGENCY MEDICAL SERVICES 28 (1986).

[26] It may also give states a powerful incentive *not* to require agricultural employers to carry workers' compensation coverage. That is surely not something Congress intended.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded with instructions to dismiss respondents' AWPA claims for bodily injuries or death.

Respectfully submitted,

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No. 88-2035

In The Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, et al,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF ADAMS FRUIT COMPANY, INC.

John I. Haas, Inc. ("Haas") moves the court for leave to file an amicus curiae brief in support of Adams Fruit Company, Inc. ("Adams Fruit").

Written consent of Adams Fruit to Haas to file an amicus curiae brief has been received and separately filed with this court. Oral consent of the trial counsel of Barrett et al has been given. Written consent has been requested, but not yet received.

John I. Haas, Inc. ("Haas") is an agricultural employer and the defendant in the pending case, *Fletes v. John I. Haas, Inc.*, Case no. 89-85FR (D Or 1989). Fletes alleges in her suit that she is entitled to damages under the Migrant and Seasonal Agricultural Workers Protection Act ("AWPA"), 29 USC § 1801 et seq. Haas moved for summary judgment on the ground that the Oregon Workers' Compensation Law, ORS 656.001 et seq, provides Fletes's exclusive remedy against her employer, Haas. The District Court denied Haas's motion for summary judgment, citing *Barrett v. Adams Fruit Co., Inc.*, 867 F2d 1305 (11th Cir 1989) and quoting the Eleventh Circuit's language in that opinion that the exclusive remedy provision of the Florida Workers' Compensation Act is preempted by AWPA. In reaching its decision, the district court, like the Eleventh Circuit in *Barrett*, found that the possibility of double recovery may be considered in awarding actual damages. The decision of this Court will likely be dispositive of an appeal by Haas resulting from the District Court's denial of Haas's motion for summary judgment.

Haas is in a position to view the issue presented to this Court by Adams Fruit from a different perspective than that of Adams Fruit because in *Fletes* it is unlikely that there will

be a final decision whether the worker is entitled to receive state workers' compensation benefits at the time the AWPA action is tried. Haas's amicus brief explains that in many circumstances it is impossible to determine at the time the AWPA action is tried whether and what benefits will be received by the worker under state workers' compensation acts. As a result, if the exclusive remedy provisions of state workers' compensation acts are held to have been preempted, workers can receive a double recovery from the employer and its insurer. This is a result that Congress could not have intended.

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November 16, 1989

INTEREST OF AMICUS CURIAE

John I. Haas, Inc. ("Haas") is an agricultural employer, who submits this brief as amicus curiae in support of Adams Fruit Company, Inc. ("Adams Fruit").

SUMMARY OF ARGUMENT

The offset proposed by the Eleventh Circuit to damages awards is often impossible to calculate. As a result, if the Migrant and Seasonal Agricultural Workers Protection Act is held to have preempted the exclusive remedy provisions of state workers' compensation acts, employers will often have to pay injured workers twice for injuries. Congress could not have intended this result.

ARGUMENT

The Eleventh Circuit in *Barrett v. Adams Fruit Co., Inc.*, 867 F2d 1305, 1310-1311 (11th Cir 1989) concluded that a court can consider "the amount of workers' compensation benefits received" in calculating the amount of actual damages to be awarded under the Migrant and Seasonal Agricultural Workers Protection Act, 29 USC § 1801 et seq ("AWPA"). As a result, the Eleventh Circuit seems to have concluded that the apparent congressional intent that there not be double recovery by a worker would not be violated if section 1854 of the AWPA was held to preempt the exclusive remedies provision of Florida's workers' compensation laws, Fla Stat Ann § 440.11 (West 1981). 867 F2d at 1310-1311. The District of Oregon in its opinion denying defendant's motion for summary judgment in *Fletes v. John I. Haas, Inc.*, Case No. 89-85FR (D Or 1989), quoted this ruling of *Barrett* and came to the similar conclusion that "[t]he possibility of a double recovery may be considered in awarding actual damages." *Fletes v. John I. Haas, Inc.*, Case No. 89-85FR (D Or June 2, 1989), reprinted in Adams Fruit Company, Inc.'s Petition for Writ of Certiorari as Appendix I, at p. 45a.

These courts are correct that double recovery should not be allowed. Congress could not have intended and apparently did not intend that employers should pay a worker twice for his or her injuries. HR Rep No. 97-885, 97th Cong, 2d Sess, reprinted in 1982 US Code Cong & Admin News 4566 (where agricultural workers are transported and are covered by state workers compensation, "no additional insurance for damages to persons need be obtained"). However, preemption will often create double recovery.

Double recovery can occur in a number of ways. First, in many instances the right to workers' compensation benefits will not be determined until well after there is a final

judgment in the AWPA action. *Fletes*, currently pending in Oregon federal district court, illustrates this problem. Fletes filed for workers' compensation benefits, but the benefits were denied by Haas's insurer on the grounds that the alleged injuries did not arise out of or within the course of her employment. Pursuant to ORS 656.319, Fletes then requested and received a hearing before a referee of the Oregon Workers' Compensation Board. Following a hearing in which witnesses were called, the referee upheld the denial of workers' compensation benefits.

Pursuant to ORS 656.295, Fletes then appealed the referee's decision to the Oregon Workers' Compensation Board. That appeal has been pending since October 1987. If Fletes or, for that matter, Haas is unhappy with the Board's decision, either may yet appeal to the Oregon Court of Appeals pursuant to ORS 656.298, then seek review by the Oregon Supreme Court, and ultimately petition for a writ of certiorari from this Court. Until the review and appellate process initiated by Fletes on her right to workers' compensation benefits is concluded, and this process may still be long from over, there is no way to know if compensation benefits will ultimately be awarded to Fletes.

In contrast, her pending AWPA action in Oregon federal court could be tried within the next several months. (Indeed, many civil cases in the Oregon federal district court are tried within one year of the date of filing of the complaint.) If Fletes prevails in the AWPA action, at the time the Oregon federal court enters judgment it will thus not know whether plaintiff will ever be awarded compensation under Oregon Workers' Compensation Act. The court will therefore have no way to decide whether to allow for an offset to avoid double recovery, let alone in what amount.

Even if an employer or its compensation insurer has accepted the injury claim under a state workers' compensation system before a federal district court awards actual

damages under the AWPA, the problem is not solved because the Eleventh Circuit's conclusion in *Barrett* that there can be an offset for "the amount of workers' compensation benefits received," 867 F2d at 1311, ignores the nature of workers' compensation benefits. To start with, benefits are often not "received" in a single lump sum. Rather, many, and in particular cases most, benefits are received in the future. Apart from that, in many instances it can be impossible to predict with any degree of reasonable certainty the present value of benefits yet to be received.

Under Oregon Workers' Compensation Law, ORS 656.001 et seq, for example, if the claim is accepted, the worker still may not be medically stationary at the time of the AWPA award. If the worker is not medically stationary, his or her right to permanent total disability, ORS 656.206, permanent partial disability, ORS 656.214, temporary total disability, ORS 656.212, or temporary partial disability, ORS 656.210, is unknown. Depending on which of these four classifications the worker's injuries fall into, he or she may receive different kinds or schedules of benefits. Compare, ORS 656.206, 656.210, 656.212, and 656.214.

Further, under ORS 656.273 a worker is entitled to additional compensation for unforeseeable but worsened conditions resulting from the original compensable injury. These "aggravation" rights extend for five years from any of three different dates. ORS 656.273(4). Yet it is essentially impossible in many instances to predict whether a particular worker will sustain one or more aggravations during the five-year aggravation period. In addition, the Oregon Workers' Compensation Board can modify, change, or even terminate awards and findings over the life of the worker. ORS 656.278. The Board can also suspend benefits for a period of time. ORS 656.325. Thus, even when the right to workers' compensation benefits has been decided before

the offset must be calculated, calculation of future benefits can be little more than a stab in the dark.

The Eleventh Circuit's rule in *Barrett* can also lead to a tactical manipulation of the courts and the workers' compensation system. As explained above, the worker can obtain double recovery from the employer if his or her compensation claim is decided after the AWPA action. The worker thus has the incentive to delay making his or her compensation claim and to string out the determination of benefits under the workers' compensation system, by appeals or otherwise, as long as possible.

One approach in response to these problems is for the federal courts to recognize that, as a matter of federal law, the AWPA creates by implication for employers a right of action against an employee for reimbursement if subsequent to the AWPA decision the employee receives either the right to obtain workers' compensation benefits or there is an increase in his or her compensation benefits through modification of an earlier award. It seems unlikely, however, that Congress intended to create such a federal right at essentially the same time it restricted diversity jurisdiction and declined to increase the size of the federal bench as rapidly as many have urged. But if it is held that the AWPA preempts the exclusive remedies provisions, the recognition of such a right of action is a necessary conclusion.

Nor does state law provide any promise of relief to employers who are faced with the prospect of double payments. For example, in roughly analogous circumstances Oregon law bars actions by an automobile insurer which seek to recover through reimbursement from or impose a trust on funds that a workers' compensation insurer is obligated to pay to a worker for the same injuries that the automobile insurer has previously provided benefits. *Farmers Insurance Co. v. Ownby*, 40 Or App 15, 594 P2d 834 (1979). Even were there a right of

action, Oregon law would bar garnishment of workers' compensation benefits. ORS 656.234.

Finally, permitting recovery under both the AWPA and the state workers' compensation acts wrongly increases the litigation burden of the employers. In many instances, and in Fletes in particular, the employer can be forced to simultaneously defend claims for damages for the same injuries in the workers' compensation system and the courts. Congress could have not meant that result, nor should this Court endorse that result.

CONCLUSION

The Eleventh Circuit incorrectly concluded that an offset can be calculated so that employers and their insurers, when they are insured, will not have to pay a employee twice for his or her injuries. It therefore also incorrectly concluded that the exclusive remedy provisions of state workers' compensation acts are preempted by the AWPA.

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OCTOBER TERM, 1989

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Petitioner,

v.

RAMSFORD BARRETT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF THE AMICUS CURIAE CALIFORNIA WORKERS' COMPENSATION INSTITUTE IN SUPPORT OF PETITIONER

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I. INTEREST OF THE AMICUS CURIAE

The California's Workers' Compensation Institute is a non-profit research and educational organization. Its membership is limited to insurers who are authorized to write workers' compensation coverage, and its member insurers currently write ninety-five percent of the California statewide premium.

The California Workers' Compensation Institute is devoted to the maintenance of the California workers' compensation system and works where necessary to effect administrative, regulatory and statutory changes. The Institute is interested in preserving the integrity of the workers' compensation system and the basic philosophy upon which compensation rests.

II. SUMMARY OF ARGUMENT

The implementation of a workers' compensation system is within the traditional police powers of a state. As such there is a presumption against pre-emption of a state statute created as an exercise of this police power.

The Eleventh Circuit Court of Appeals incorrectly decided that the Migrant and Seasonal Agricultural Workers' Protection Act (AWPA) pre-empted the Florida workers' compensation statute. Consideration of the aforesaid presumption against pre-emption compels the finding that preemption is not appropriate in this case.

A strong conflict must exist between the two statutes in order to overcome the presumption. No such conflict exists in the instant case in that both statutes provide for redress to injured workers.

One difference between the two statutes is that under the state system, workers' compensation becomes the injured worker's exclusive remedy. The exclusivity of workers' compensation is a basic underpinning of a no-fault compensation system and is crucial to the balance of the system. The

employer accepts liability for all industrial injuries, without regard to fault, and the worker is assured of rapid medical treatment and compensation, but foregoes the right to sue the employer for personal injury.

In order for a state to legislate that employers must accept liability for all work-related injuries without regard to fault, it is essential that the employer's exposure be limited to compensation rather than liability based on tort concepts. The formulation of such a system is a valid exercise of the state's police power. Coupled with the fact that Congress has provided within the AWPA for the substitution of workers' compensation insurance for liability insurance, and that both systems seek to compensate injured workers, the federal statute clearly does not pre-empt the state's exercise of its police power.

III. ARGUMENT

THE PRESUMPTION AGAINST PRE-EMPTION IN AREAS WHERE A STATE LEGITIMATELY EXERCISES ITS POLICE POWER CANNOT BE OVERCOME IN THE INSTANT CASE

The Supremacy Clause of the United States Constitution provides that Congress may pre-empt an area of the law. U. S. Const. Art. VI. In order to determine if state law is pre-empted by federal law, the only inquiry is to determine the intent of Congress. *California Federal Sav. and Loan Ass'n* v. *Guerra*, 479 U.S. 272, 280 (1987), *citing Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983), and *Malone* v. *White Motor Corp.*, 435 U.S. 497, 504 (1978).

In *California Federal*, this honorable Court set out the three ways that federal law may pre-empt state law. First, Congress may pre-empt state law by expressly stating the pre-emption. *California Federal*, 479 U.S. at 280, *citing Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977). Second, the intent to pre-empt state law may be inferred when the "scheme of

federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulations." *California Federal*, 479 U.S. at 281, *citing Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Third, even if Congress has not completely displaced state law, " . . . federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law." *California Federal*, 479 U.S. at 281.

In its decision below, the Eleventh Circuit Court of Appeals found that the first two bases for pre-emption were not present, but that the state statute was pre-empted on the third basis. The Eleventh Circuit did not address the presumption that state law is not to be pre-empted in an area traditionally regulated by the states. In *California* v. *ARC America Corp.*, __ U.S. __, 109 S.Ct. 1661 (1989), this Court noted that the appellees therein "must overcome the presumption against finding pre-emption of state law in areas traditionally regulated by the States." *Id.* at 1665. A state's regulation of an employer's liability and an employee's corresponding remedy is a valid and well-recognized exercise of a state's police power. The presumption of the validity of Florida's workers' compensation laws cannot be overcome in this case.

This Court has held, "When Congress legislates in a field traditionally occupied by the States, 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was a clear and manifest purpose of Congress.'" *Id.* at 1665, *quoting Rice*, 331 U.S. at 230.

This Court has previously indicated that within the police power of a state is the authority to regulate the employment relationship in order to protect workers in that state and that this includes the authority to promulgate workers' compensation laws. *DeCanas* v. *Bica*, 424 U.S. 351, 356 (1976). The presumption against pre-emption where states' police powers are involved has been discussed by this Court in many

cases. *See Allen-Bradley Local No. 1111, etc.* v. *Wisconsin E. R. Board*, 315 U.S. 740, 749 (1942); *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 146 (1963); *Hillsborough County, Fla.* v. *Auto. Med. Labs.*, 471 U.S. 707, 715 (1985).

In *Hillsborough* local ordinances governing blood plasma collection were challenged as being pre-empted by federal regulations which set minimum standards on the collection of plasma. This Court set out the additional presumption against pre-emption under the state's police power and stated:

> Appellee must thus present a showing of implicit pre-emption of the whole field, or of a conflict between a particular local provision and the federal scheme, that is strong enough to overcome the presumption that state and local regulation of health and safety matters can constitutionally coexist with federal regulation.

Id. at 716.

A. No conflict exists between the two statutes which overcomes the presumption against pre-emption.

In the case at bar the question of implicit pre-emption is not at issue but rather whether there is a conflict between the two statutory schemes that can overcome the presumption in favor of the state's police power. No such conflict is present between the Florida and federal statutes. The AWPA provides several protections for agricultural workers including motor vehicle safety standards. 29 U.S.C. §1841. In addition, it provides that for any violations of the AWPA a person aggrieved may bring a private right of action in federal district court. 29 U.S.C. §1854.

In the instant case respondents, a group of farm workers, were injured in an automobile accident during their employment and received workers' compensation benefits. More than one year later they brought private actions under AWPA

Section 1854. The district court ruled that inasmuch as they had received Florida workers' compensation benefits, workers' compensation was their exclusive remedy; and, therefore, they were precluded from using the federal statute's private right of action. The Eleventh Circuit Court of Appeals reversed the lower court, holding that AWPA Section 1854 pre-empted the exclusive remedy provision of the Florida statute. *Barrett* v. *Adams Fruit Co., Inc.*, 867 F.2d 1305 (11th Cir. 1989).

The court of appeals failed to consider the presumption against pre-emption in an area involving a state's police powers. The court did not examine the statutes to determine if a strong enough conflict exists between the two to overcome the presumption, as this Court did in *Hillsborough*. 471 U.S. at 716.

In the interplay between the two statutes no overwhelming conflict exists because the underlying purpose of compensating the injured worker has been achieved. Under the Florida workers' compensation system the injured workers received the necessary medical attention, disability payments, if applicable, and compensation for lost wages. *See* Fla. Stat. §§440.12, 440.13 and 440.15. In this sense the necessary protection of the migrant and seasonal agricultural workers has been achieved in that they have received medical treatment and compensation for bodily injuries resulting from motor vehicle accidents.

A head-on conflict between the two statutory schemes does not exist in this case. In *Rose* v. *Arkansas State Police*, 479 U.S. 1 (1986) a head-on conflict between the Public Safety Officers' Death Benefits Act and the Arkansas Workers' Compensation Act existed. In that case the widow of a state trooper received a $50,000.00 benefit under the federal act which provided that the benefit was in addition to any other benefit from any other source. *Id.* at 2. Under the Arkansas workers' compensation system the widow applied for death benefits and the Arkansas Insurance Department

agreed the claim was compensable but indicated that the state compensation owed was to be reduced by the amount of the federal benefit. In that case there was a direct conflict between the two statutes since the federal statute clearly provided for an *additional* benefit and the state statute was invalidated. *Id.* at 3. No such conflict is posed in the instant case because the broad purpose of the federal act is served by the benefits of the workers' compensation system. The injured worker would not be able to pursue a private action for bodily injury in federal court but would still have the private right of action for other violations of the AWPA.

B. The broad purpose behind the AWPA is to provide protection to migrant and seasonal agricultural workers and agricultural employers.

The AWPA provides certain protections for migrant and seasonal agricultural workers including information and record keeping requirements (29 U.S.C. §1821), safety and housing requirements (29 U.S.C. §1823), and motor vehicle safety (29 U.S.C. §1841), to name some of the provisions of the AWPA. The statement of Congressional purpose provides:

> It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.

29 U.S.C. §1801.

In providing for motor vehicle safety, Congress established that when transporting migrant or seasonal agricultural workers, employers are required to have in place an insurance policy or liability bond which insures the employer for liability against personal injury or property damage. 29 U.S.C. §1841(b)(1)(C). Additionally, if an employer has state workers' compensation coverage then no insurance policy or liability bond is required when workers are transported under circumstances where there is coverage under the state workers' compensation law. 29 U.S.C. §1841(c)(1). By this section Congress has recognized that workers' compensation insurance can be substituted for liability insurance. The recognition of workers' compensation insurance would imply that Congress has then recognized the attendant workers' compensation system including its exclusive remedy provision.

In Section 1854 of the AWPA Congress created a private right of action for anyone aggrieved by a violation of the chapter. Those violations can include simple record keeping violations or any of a number of statutory violations. When viewed as a whole the AWPA provides migrant and seasonal workers with various protections including motor vehicle safety. The motor vehicle safety provision, 29 U.S.C. §1841, provides safety standards and also provides that there shall be insurance coverage when transporting workers whether that be through an insurance policy, liability bond or workers' compensation insurance. In essence, the broad purpose of the AWPA in the event of a motor vehicle accident causing bodily injury to a migrant or seasonal agricultural worker is to provide redress for that injury.

By the same token the state workers' compensation system provides the same type of redress for bodily injury. Under the Florida workers' compensation system, these injured workers received medical treatment, disability payments, if applicable, and lost wages. *See* Fla. Stat. §§440.12, 440.13, and 440.15. Having received the benefit of the workers' compensation system, however, workers' compensation became the workers' exclusive remedy. Because compensation was their exclusive remedy they were then precluded from pursuing the private right of action included within AWPA. Nevertheless, these two statutes can be reconciled in

that the injured workers received the protection generally conceived by the AWPA, namely redress for injury.

C. The broad purpose behind state workers' compensation is to offer redress to every injured worker and to limit the exposure of the employer to liability for compensation.

In reconciling these two statutes the Court should also look at the interest of the state in establishing a workers' compensation system. In its decision against pre-emption in *New York State Dept. of Social Services* v. *Dublino*, 413 U.S. 405 (1973), this Court commented on the legitimate state interest involved in encouraging its citizens capable of working to do so. 413 U.S. at 413. In *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware*, 414 U.S. 117 (1973), this Court also commented on California's strong policy of protecting its wage earners. 414 U.S. at 139. In the case of workers' compensation, the state's policy interest is in providing benefits, both medical and financial, to its injured workers. "The ultimate 'social philosophy,' then, behind nonfault compensation liability is the desirability of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits which an enlightened community would feel obliged to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source." 1 A. Larson, *The Law Of Workmen's Compensation* §2.20, at 7 (1988).

In order to qualify for workers' compensation benefits the worker need only demonstrate an injury connected to employment. The concepts of negligence and fault do not enter into the compensation system and do not affect the workers' recovery. Professor Larson has stated, "Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude: if the accident arises out of and in the course of the employment, the employee receives his award. Reverse the positions, with a careless and stupid employer and a wholly

innocent employee: the same award issues." 1 A. Larson, *supra*, §2.10, at 5. By this system, the injured worker is compensated and need not be concerned with proving liability or fault. By the same token, the employer is responsible for all work related injuries even if the employer is entirely innocent of any fault in causing those injuries.

In order to effect this trade-off, where the employer accepts responsibility for all work-related injuries and the employee does not have to show anything more than an injury arising out of the course of employment, this system becomes the employee's exclusive remedy. "This is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts [footnote omitted]." 2A A. Larson, *supra*, §65.11, at 12-1, 12-9. In the balance the worker receives prompt medical treatment and benefit payments without time-consuming litigation. In a normal personal injury suit the worker could be forced to wait years before receiving reimbursement for those medical costs and lost wages and of course must deal with the problems of proof and of overcoming the defenses of civil litigation. As opposed to this time consuming and uncertain process, the worker is entitled to immediate treatment and benefits under the workers' compensation laws. This Court has commented when discussing workers' compensation systems:

> Historically, workmen's compensation statutes were the offspring of a desire to give injured workers a quicker and more certain recovery than can be obtained from tort suits based on negligence and subject to common-law defenses to such suits. Thus, compensation laws are practically always thought of as substitutes for, not supplements to, common-law actions. A series of comparatively recent cases in this Court has recognized this historic truth and ruled accordingly. *Johansen* v. *United States*, 343

> U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051, and *Patterson* v. *United States*, 359 U.S. 495, 79 S.Ct. 936, 3 L.Ed.2d 971, for instance, are typical of the recognition by this Court that the right of recovery granted groups of workers covered by such compensation laws is exclusive. Such rulings of this Court have established as a general rule the exclusivity of remedy under such compensation laws [footnote omitted].

United States v. *Demko*, 385 U.S. 149, 151 (1966).

The exclusivity of the workers' compensation remedy is undoubtedly essential to the operation of the system. The employer is forced to compensate its workers for all industrial injuries regardless of whether the employer is at fault, but at the same time the employer is assured that workers' compensation is its only liability to workers. Accordingly, employers are able to insure their workers' compensation coverage but do not have the burden of insuring against liability cases by employees arising from the same injuries.

In enacting workers' compensation statutes states have a strong policy interest in providing speedy recovery to their injured workers whatever the cause of the industrial injury, but at the same time in providing employers with the protection that they will not be exposed to further lawsuits beyond workers' compensation claims.

In the instant case Congress has recognized the balancing between private tort actions and workers' compensation systems by providing that in motor vehicle matters, if workers' compensation coverage applies, no other insurance need be obtained. This is a clear indication by Congress that it meant to balance the existing states workers' compensation systems with the overall protection of migrant and seasonal agricultural workers.

All states currently have workers' compensation acts in effect. *See* 1 A. Larson, *supra*, §5.30, at 39. However, not all

states' compensation acts apply to agricultural labor. In fact in 1985 eleven states excluded farm labor from their compensation statutes. 1C A. Larson, *supra*, §53.10, at 9-189. In these states the AWPA private right of action would provide redress to those workers. However, in those states where a migrant or seasonal worker is injured such as he is covered by the state workers' compensation act, that act would be the worker's exclusive remedy against the employer. Inasmuch as Congress has recognized workers' compensation coverage for bodily injury in motor vehicle claims, the states' policy in creating the exclusive remedy as part of the compensation system should be left to coexist with the federal statute. To do otherwise does great violence to the underpinnings of the compensation system and leaves employers with an uninsured loss.

D. Congress specifically reconciled the two statutes by anticipating the interrelationship of the AWPA with state workers' compensation laws.

In discussing the "clear and manifest" requirement of Congress' intent to supersede the state power, this Court has stated, "If Congress had intended to pre-empt state plans . . . such intentions would in all likelihood have been expressed in direct and unambiguous language". *New York* v. *Dublino*, 413 U.S. at 405. No language in the AWPA indicates Congress intended to pre-empt the exclusivity provisions of state workers' compensation laws. Rather the statute specifically provides that it is intended to supplement state law. 29 U.S.C. §1871.

In *New York* v. *Dublino* this Court dealt with the question of whether provisions of the Social Security Act outlining work incentive programs pre-empted the work rules of the State of New York for people participating in Aid to Families With Dependent Children (AFDC). 413 U.S. at 406-07. The state had enacted work rules which required recipients of public assistance to participate in efforts at employment both

through reporting systems and public works projects. If someone defined as employable failed to comply with the requirements of the work rules they would be ineligible for assistance. The Social Security Act also required that state AFDC plans provide manpower services, training and other features as a condition to receiving assistance. Upon a challenge by some of the recipients of assistance the district court found the Social Security Act pre-empted the state work rules. This Court could not find Congress' clear manifestation of intent to pre-empt and found that the state work rules were not pre-empted by federal law. *Id.* at 422.

In examining whether California law which precluded compulsory arbitration of wage disputes was pre-empted by federal regulation, this Court commented "our analysis is also to be tempered by the conviction that the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.' " *Merrill Lynch*, 414 U.S. at 117, *quoting Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963). When viewed as to their broad purposes the statutory schemes involved in this case can be reconciled.

In addition to the motor vehicle safety provision of the AWPA, Congress has provided in Subsection (c) of 29 U.S.C. Section 1841 that if an agricultural employer provides workers' compensation coverage for bodily injury or death for migrant or seasonal agricultural workers, no insurance policy or liability bond is required if the workers are transported under circumstances where there is coverage under the state workers' compensation law. In this provision Congress has made an explicit incorporation of the state workers' compensation law into the workings of the AWPA. This section, in essence, instructs employers that if they have workers' compensation insurance that covers their migrant and seasonal workers, there is no need for an additional insurance policy or liability bond in the case of bodily injury or death resulting

from motor vehicle accidents. The fact that the workers' compensation forum then becomes the injured worker's exclusive forum does not conflict with the federal statute.

This Court has explained, "The subjects of modern social and regulatory legislation often by their very nature require intricate and complex responses from the Congress, but without Congress necessarily intending its enactment as the exclusive means of meeting the problem [citation omitted]." *New York* v. *Dublino*, 413 U.S. at 415.

The AWPA is indeed a complex response from Congress but the fact that it is intended to supplement the states' laws and makes specific provisions relating to workers' compensation insurance indicates that the private right of action under the AWPA is not the only solution to the problem of redress for bodily injury. Rather Congress seemed to recognize and provide for the substitution of workers' compensation. It is entirely consistent with this Congressional scheme that workers' compensation be the injured worker's exclusive remedy.

IV. CONCLUSION

The Florida workers' compensation statute was created by the state under an exercise of its police powers. As such there is an additional presumption against pre-emption of this state's statute. In this instance there is not a strong enough showing of a conflict between the federal statute and the state statute in order to justify pre-emption. Moreover, the two statutes can be reconciled when viewed for the broad purpose of providing redress to injured workers. Additionally, preserving the state's police power in its enactment of workers' compensation laws should be of paramount consideration. Certainly, the presumption of preservation of a state's police power has not been rebutted by any analysis. Accordingly, the decision of the Court of Appeals for the

Eleventh Circuit should be vacated and the decision of the United States District Court for the Middle District of Florida reinstated.

Respectfully submitted,

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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC., a Florida Corporation,
Petitioner,

v.

RAMSFORD BARRETT *et al.*,
Respondents.

On a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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Brief of Congressman William D. Ford and the Washington Lawyers' Committee for Civil Rights Under Law as *Amici Curiae in Support of Respondents*

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INTEREST OF THE AMICI CURIAE

Congressman William D. Ford is the ranking member of the Committee on Education and Labor of the United States House of Representatives. He chaired the House Subcommittee on Agricultural Labor from 1973-1977. He was the author and floor manager of the 1974 Amendments to the Farm Labor Contractor Registration Act ("FLCRA") which created a private right of action for farm workers. In 1983, he co-sponsored the bill which became the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") and was one of the key House members who secured the enactment of the bill. He has a keen interest in the proper interpretation and enforcement of the remedial provisions of AWPA.

In addition to his work on FLCRA and AWPA, Congressman Ford has been active in shaping every other piece of labor legislation affecting migrant and seasonal agricultural workers since 1973, including amendments to the Fair Labor Standards Act, the Immigration Reform and Control Act and the Job Training Partnership Act.

Congressman Ford has particularly worked to secure proper education of the children of migrant farm workers. Since 1978, he has served as Chairman of the Interstate Migrant Education Council and is a member of the National Commission on Migrant Education. Congressman Ford was instrumental in the establishment of the Office of Migrant Education in the United States Department of Education.

The Washington Lawyers' Committee for Civil Rights Under Law was established in 1968 by a group of law firms in response to the racial disturbances that had erupted in Washington, D.C. and many other cities. Its goal then, as today, is to provide high quality *pro bono* legal services to victims of discrimination and poverty in the Washington community. Over the years, the Committee has participated in more than 2,000 cases of civil rights

advocacy on the basis of contributed services of the private bar.

The defense of farm worker rights has been an important program for the Committee. The Committee has frequently mobilized legal resources to aid farm workers working in the fields of Maryland, Virginia, and West Virginia. The preservation of farm workers' rights to bring private actions to secure the protection of AWPA is a cause to which the Committee is committed.

STATEMENT OF THE CASE

Plaintiffs are migrant and seasonal farm workers under the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, 96 Stat. 2584 (1983) (codified at 29 U.S.C. §§ 1801-1872) ("AWPA"). They have sought relief under the private remedy provisions of Section 1854 for injuries caused by defendant's intentional violations of the Act.

Defendant employed plaintiffs to harvest oranges in central Florida in early 1985. (J.A. 4) On the morning of May 8, defendant was transporting plaintiffs and nine other workers to defendant's worksite in a van owned by defendant. (J.A. 5) Contrary to the provisions of AWPA concerning vehicle safety and the regulations promulgated under AWPA to protect migrant and seasonal farm workers from injury, defendant did not provide seat belts, did not provide each worker with a seat, loaded nineteen persons on board even though the van had a maximum capacity of but twelve, and failed to secure cargo appropriately. (J.A. 5-8) During the trip, a tire blew out; the overloaded van ran off the highway and overturned. (J.A. 6) Plaintiffs suffered serious permanent physical injuries. *Id.*

Plaintiffs received limited workers' compensation benefits under the Florida workers' compensation law for their

diminished capacity to work, in accordance with the schedules contained in the law. (J.A. 11-12) Plaintiffs thereafter filed suit under AWPA in the United States District Court for the Middle District of Florida to recover their actual damages. The court granted defendant partial summary judgment with respect to the plaintiffs' claims for damages caused by defendant's intentional violations of the motor vehicle safety provisions of AWPA. (J.A. 20) The court (Kovachevich, J.) ruled that the workers' compensation benefits provided pursuant to the Florida law constituted, by reason of the state exclusivity provision in the state statute, the exclusive remedy for plaintiffs' injuries. *Barrett* v. *Adams Fruit Company, Inc.*, No. 86-1301-Civ.-T-17 (M.D. Fla. Oct. 29, 1987).

After settlement of certain other causes of action alleged by plaintiffs under AWPA, the court entered judgment for defendant and plaintiffs appealed the summary judgment order. The Court of Appeals for the Eleventh Circuit reversed. *Barrett* v. *Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). After reviewing the legislative history of AWPA, the court held that the private remedy provided by AWPA for actual damages resulting from intentional violations of that Act, 29 U.S.C. § 1854, preempted the exclusive remedy provisions of the Florida law. 867 F.2d at 1310.

SUMMARY OF ARGUMENT

In enacting AWPA, Congress determined that the best means for effectively protecting migrant and seasonal farm workers from a catalogue of shocking abuses and for enforcing AWPA lay in empowering farm workers on their own behalf to obtain damage and injunctive remedies from the federal courts. Congress did not intend to subordinate these AWPA remedies to the limited workers' compensation benefits available to some injured farm workers under the laws of some of the states. Congress' references in AWPA to workers' compensation insurance merely de-

scribe a means for coordinating benefits between types of insurance required by the Act for the protection of farm workers.

This Court has ruled that exclusive remedy provisions of state workers' compensation statutes are limited in effect only to bar supplemental remedies under the laws of the state of enactment and do not bar awards of supplemental benefits to injured workers under the laws of other jurisdictions, either under the laws of other states, or as in the instant case, under laws of the United States. *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 286 (1980). The Florida Supreme Court has construed the Florida workers' compensation statute in consonance with that ruling. *See Byrd* v. *Richardson-Greenshields Securities, Inc.*, 14 Fla. L. Weekly 549 (Fla. Sup. Ct. Oct. 26, 1989); *DeCancino* v. *Eastern Air Lines*, 239 So. 2d, 15, 17 (Fla. 1970). Thus, the exclusive remedy provision of the Florida law does not apply in the instant case.

If this Court should determine that the exclusive remedy provision of the Florida law applies herein, then that provision stands as an obstacle to the accomplishment of the full purposes of Congress in AWPA and the Court should "pre-empt the state compensation exclusivity clause." *Sun Ship, Inc.*, v. *Pennsylvania*, 447 U.S. 715, 724 n.6 (1980).

ARGUMENT

I. CONGRESS INTENDED TO REMEDY THE HISTORIC EXPLOITATION OF FARM WORKERS BY PROVIDING THEM IN AWPA WITH AN EFFECTIVE PRIVATE RIGHT TO FEDERAL JUDICIAL RELIEF

A. Congress' Purpose in AWPA Was To Prevent the Continued Exploitation of Farm Workers by Giving Them a Private Right To Obtain Federal Court Remedies for Violations of the Act

In the early 1960s, concerned about the shameful exploitation of migrant and seasonal farm workers, Congress

undertook a comprehensive investigation of agricultural employment practices. The focus of this investigation was the mistreatment of farm workers by farm labor contractors or "crew leaders," who served as liaisons between the employers and the farm workers. The crew leaders organized groups of farm workers, contacted the employers, transported the farm workers to the farms, supervised them while they worked, and paid their wages. Thus, the crew leader was "the individual who ha[d] the most continuing relationship with . . . migrant workers." S. Rep. No. 202, 88th Cong., 2d Sess. 2 (1963).

Department of Labor surveys, conducted in 1960 and 1962, catalogued a variety of crew leader abuses of the farm workers: crew leaders wrongfully pocketed transportation money advanced by employers and deducted from workers' earnings; they failed to return workers to their homes; they misrepresented the nature of jobs for which workers were hired; they grossly overstated the wages that farm workers would earn; and they unjustly misappropriated the workers' meager salaries by "collecting wages from employers but abandoning workers without payment" and "overcharging for groceries or meals." *Id.* at 5.

Congress responded in 1963 by enacting the Farm Labor Contractor Registration Act, Pub. L. No. 88-582, 78 Stat. 920 (1963) ("FLCRA"). This statute focused on the role of crew leaders and required crew leaders to register with the Secretary of Labor. § 4. To obtain registration, the crew leaders had to: (1) attest that they would abide by standards of conduct prescribed in the Act; (2) file proof that they had secured insurance for personal injury and property damage liability arising out of the transportation of migrant workers; and (3) file sets of their fingerprints. § 5. FLCRA also required crew leaders to disclose truthfully to workers the location and nature of the crops to be harvested, the transportation, housing, insurance, and

wages that would be provided, and the charges crew leaders would deduct for their services. § 6(b).

Only the Secretary of Labor could enforce the crew leader registration mechanism. FLCRA gave farm workers no private remedies.

In the early 1970s, testimony presented to Congress evidenced that the Department of Labor was not enforcing FLCRA for the protection of migrant farm workers. Representative William D. Ford, Chairman of the Subcommittee on Agricultural Labor of the House of Representatives, informed the House that, despite FLCRA, crew leaders were continuing to "exploit their crews." Crew leaders were: "transport[ing] them in unsafe vehicles," "fail[ing] to furnish the contemplated housing," "exploit[ing] the worker in the sale of food," "withhold[ing] for their own profit part of the promised wage," and "traffick[ing] in marijuana, bootleg whiskey or prostitution." 119 Cong. Rec. H3447 (daily ed. May 8, 1973).

The House Committee on Education and Labor heard "complaints from migrants who alleged that they were being cheated out of their wages, overcharged for the food furnished, and physically assaulted." In addition, the Committee was overcome with examples of "misleading recruitment practices." Indeed, one crew leader acknowledged that "he was unaware of any contractor who did *not* give false or misleading information to migrants in recruiting." H.R. Rep. No. 1024, 93d Cong., 2d Sess. 5 (1974) (emphasis in original).

The Senate was advised that vehicles carrying farm workers were "mechanically unsafe" and "overcrowded;" that there were "several instances [of] conditions that fit the legal definition of slavery involving east coast crew leaders;" that migrant farm workers' income "remains at the bottom of America's pecking order of labor;" and that migrant farm workers "*have the most limited legal protections of any American worker.*" 120 Cong. Rec. S5467

(daily ed. Apr. 9, 1974) (statement of Senator Edward Kennedy) (emphasis supplied).

There was widespread congressional agreement that "many of the abuses which were the subject of the 1963 legislation ha[d] continued unabated." H.R. Rep. No. 1024 at 5. "Noncompliance by those whose activities the Act were intended to regulate ha[d] become the rule rather than the exception." S. Rep. No. 1206, 93d Cong., 2d Sess. 3 (1974).

Congress repeatedly observed that Department of Labor enforcement of FLCRA had been ineffective, in part because of "the Department's shortage of adequate manpower to police the Act." H.R. Rep. No. 1024 at 6. "The field staff of the Labor Department's Farm Labor Contract Registration Section was limited in 1968 to five professional employees." 119 Cong. Rec. H3447 (daily ed. May 8, 1973) (statement of Representative Ford). This grossly understaffed agency could not implement FLCRA's farm worker protections. The Department's most severe sanction commonly was "writ[ing] letters to all law violators." 120 Cong. Rec. S5467 (daily ed. Apr. 9, 1974). Most crew leaders remained unregistered. 119 Cong. Rec. H3447. The Secretary of Labor had completed only a handful of investigations. *Id.* By 1974 "only four persons ha[d] been referred to the Department of Justice for prosecution; and only one person ha[d] ever been convicted and sentenced." S. Rep. No. 1295, 93d Cong., 2d Sess. 3 (1974).

This testimony established for Congress the critical need for a "private remedy for aggrieved workers." *Id.*

Accordingly, Congress determined that the farm workers themselves had to be empowered with access to federal courts in order to enforce the Act. Congress desired a mechanism that was "self-enforcing" and "patterned after other Federal statutes in the field of civil rights." *Farm Labor Contractor Registration Act Amendments of 1963: Hearings Before the Subcomm. on Agricultural Labor of*

House Comm. on Education and Labor, 93d Cong., 1st Sess. 112 (1973). The mechanism Congress chose was the creation of "an *unfettered federal civil remedy* for persons aggrieved by a contractor's violation of the Act." H.R. Rep. No. 1024 at 6 (emphasis supplied).

Congress determined that the private right of action, "crucial to the effective enforcement of existing law," *id.*, was to be "available regardless of the existence of any criminal or administrative sanctions provided for specific kinds of violations of [the] Act." H.R. Rep. No. 1493, 93d Cong., 2d Sess. 11 (1974). Congress praised the private civil action as "provid[ing] . . . a more realistic arsenal of remedies in order to deter and correct the widespread violations that now exist,"[1] and "[p]roviding an aggrieved farm worker with a Federal forum [that] will help secure the Federal protections to which he is entitled." 120 Cong. Rec. S18130 (daily ed. Oct. 3, 1974).

Congress thereupon enacted the comprehensive private action provision which authorized the award of unlimited damages for "intentional" violations "up to and including an amount equal to the amount of actual damages" or "$500 for each violation" as well as "other equitable relief." Farm Labor Contractor Registration Act Amendments of 1974, Pub. L. No. 93-518, 1974 U.S. Code Cong. & Admin. News 1899, 1905. So that the right might be truly effective, Congress even authorized the judicial appointment of counsel for aggrieved farm workers. *Id.*

The private remedy added to FLCRA helped to reduce the exploitation of migrant farm workers. Nevertheless, Congress continued to observe shocking abuses. Crew leaders continued their oppression. Moreover, FLCRA's narrow focus on crew leader misconduct was allowing other employers to exploit farm workers without penalty.

[1] S. Rep. No. 1206 at 3.

The federal court cases brought by farm workers evidenced the exploitation.[2] These cases especially described outrages in the transportation of farm workers. Crew leaders and other employers were transporting farm workers with less concern for their safety and dignity than farm animals. Families were crammed into trucks lacking minimal safety devices let alone ordinary comforts. *See AWPA Hearings* at 110, 123-24. In "appallingly unsafe" vehicles, "people had to sit on top of piled luggage and bundles." *Id.* at 110. Children had to stand for long journeys as defective floor boards allowed "fumes to come [into] the truck." *Id.* Tarpaulins pulled over the top of trucks allowed farm workers "very little air or ventilation." *Id.* Women and children suffered the absence of food, water, and restroom facilities. *Id.* Trucks, some even without headlights, repeatedly crashed or broke down. *Id.* at 124. Exhausted drivers were kept awake as they drove only by the farm workers' shouts of panic. *Id.*[3]

In direct response, Congress thoroughly revised FLCRA and enacted AWPA in its present form. AWPA reenacts provisions of FLCRA concerning crew leader registration, 29 U.S.C. §§ 1811-1815, vehicle insurance, 29 U.S.C. § 1841(b)(1)(C), the prohibition against misleading workers, 29 U.S.C. § 1821(f), the requirement of farmer compliance with working arrangements, 29 U.S.C. § 1822, the prohibition against employing illegal aliens, 29 U.S.C. § 1816, and the disclosure requirements, 29 U.S.C. § 1821(a)-(d). In addition, AWPA imposes the obligation to protect migrant farm workers on *every* employer, including both crew leaders and fixed-situs employers such as the defendant herein. *See* 29 U.S.C. §§ 1821-1844.

[2] *See Hearings on the Migrant and Seasonal Agricultural Worker Protection Act: Hearings on H.R. 7102 Before the Subcomm. on Labor Standards of the House Comm. on Education and Labor*, 97th Cong., 2d Sess. 87-106 (1982) (hereinafter "*AWPA Hearings*").

[3] Other abuses perpetrated by farm worker employers were catalogued for Congress. *See AWPA Hearings* at 61-62.

Of signal importance, Congress carefully reenacted the farm workers' private right of action in AWPA and empowered courts to increase statutory damage awards against recalcitrant employers. *See* 29 U.S.C. § 1854(c). The House Report on AWPA sets forth the intent of Congress "to encourage the resolution of differences without resort to litigation, but also to *insure full access to the Federal courts by injured private parties.*" H.R. Rep. No. 885, 97th Cong., 2d Sess. 21 (1982) (emphasis supplied).

Representative Ford, former Chairman of the House Agricultural Labor Subcommittee and a cosponsor of AWPA, advised the full House that an important objective of the legislation was to preserve and strengthen the farm workers' rights of direct access to federal court protection:

> It has long been apparent that neither volunteerism on the part of agribusiness nor the puny enforcement efforts of the Department of Labor can be expected to make a significant difference in the working conditions of farm workers. Like the FLCRA, the AWPA provides for a private right of action and holds out the prospect of large damage awards against agricultural employers who mistreat their workers. This, I am sure, *will prove to be the most important deterrent against the continued abuse of migrant and seasonal farm workers.*

128 Cong. Rec. H10456 (daily ed. Dec. 20, 1982) (emphasis supplied).

Senator Hatch, in presenting the AWPA bill to the Senate, made "specific comment" about the private right of action and stressed that "[t]here is no limit on the amount of actual damages that can be awarded by a court." 128 Cong. Rec. S15565 (daily ed. Dec. 18, 1982). The Senator "want[ed] to make absolutely clear . . . [that] *full actual damages would be awarded in every case.*" *Id.* (emphasis supplied).

The court below, reviewing the history of the legislation, correctly perceived that Congress intended the "private right of action for violations of the Act" to be "[c]entral to the Act's enforcement." *Barrett* v. *Adams Fruit Co., Inc.*, 867 F.2d 1305, 1309 (11th Cir. 1989).

B. Congress Did Not Intend To Subordinate the Remedies Available by Private Action Under AWPA to the Limited Benefits Sometimes Available Under Workers' Compensation Schemes of the States

Petitioner urges the subordination of the farm workers' private right of action for statutory remedies in the federal courts to a system of limited benefits provided by Florida's workers' compensation laws[4] based on a single reference in AWPA to workers' compensation insurance. The congressional references to workers' compensation insurance during the legislative debates, and the express wording of AWPA, permit no such result.

FLCRA initially demanded, among requirements for crew leader registration, "a policy of insurance which insures such applicant against liability for damages to persons or property arising out of the applicant's . . . operation of . . . any vehicle for the transportation of migrant workers . . . ." FLCRA § 5(a)(2). This provision was designed to assure, in an industry filled with fly-by-night operators, some source of recovery for migrant workers injured in transportation.

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[4] Unlike AWPA, which permits an injured farm worker to recover up to his or her "actual damages," including pain and suffering, the Florida workers' compensation law limits compensation to disabilities that result in loss of earning capacity. Accordingly, if a farm worker suffers a serious permanent injury that happens not to diminish his earning capacity, no recovery would be permitted under the Florida workers' compensation law even though the injured worker has no right to sue at common law for such injury. *See Grice* v. *Suwanee Lumber Manufacturing Co.*, 113 So. 2d 742 (Fla. Dist. Ct. App. 1959).

In 1978, Congressman Ireland introduced a bill to amend FLCRA that was apparently designed to reduce the cost of crew leaders' insurance and to limit exposure to liability by acknowledging at the federal level the exclusivity of state workers' compensation remedies. The bill provided that if an employer obtained "a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment," then "the policy of vehicle liability insurance provided by him shall conform to the exclusive remedy provisions of the State workmen's compensation law." H.R. Rep. 10631(7), 95th Cong., 2d Sess., *reprinted in Farm Labor Contractor Registration Act: Hearings on H.R. 8232 and Other Bills Before the Subcomm. on Economic Opportunity of the Comm. on Education and Labor*, 95th Cong., 2d Sess. 4 (1978). Representative Ireland expressed concern about "the risk that the courts might conceivably allow 'double dipping' by agricultural workers." *Id.* at 34. Farm employer witnesses who favored the Ireland bill feared "that FLCRA preempted the exclusive remedy provision of State workmen's compensation law and allow[ed] double dipping, double recovery." *Id.* at 107.

Congress rejected the Ireland bill, evidencing an intention that the program of private farm worker federal remedies—then just recently enacted—should not be subordinated to the limited regime of state workers' compensation benefits.

In 1983, when Congress expanded the coverage of the Act so as to afford farm workers private federal remedies against a larger group of agricultural employers, Congress also authorized a set of practical insurance alternatives for one set of risks. Thus, Congress reenacted as 29 U.S.C. § 1841(b)(1)(C) the vehicle insurance requirement of FLCRA. Additionally, Congress provided for the coordi-

nation of benefits of vehicle insurance with policies of workers' compensation insurance:

> If an agricultural employer . . . provides workers' compensation coverage for such [agricultural] worker in the case of bodily injury or death as provided by such State law, the following adjustments in the requirements of subsection (b)(1)(C) of this section relating to having an insurance policy or liability bond apply:
>
> (1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.
>
> (2) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

29 U.S.C. § 1841(c).

That provision is clearly limited to coordinating coverage between two kinds of insurance covering to some degree the same risks. That provision evidences no intent by Congress that insurance coverage under state workers' compensation schemes should deprive injured farm workers of the right to bring private damage actions in federal courts. By the terms of the Act, the provision of workers' compensation insurance only relieves the employer from the obligation of otherwise following "the [vehicle insurance] requirements of *subsection (b)(1)(C) of this section* [*1841*]." *Id.* (emphasis supplied). This insurance provision makes absolutely no reference to the comprehensive scheme of private remedies described in *Section 1854*.

The Department of Labor regulation purporting to interpret the vehicle insurance provision, 29 C.F.R.

§ 500.122(b),[5] is invalid. Even if the regulation merely acknowledged the applicability of *state* exclusive remedy provisions, as they may be interpreted broadly or narrowly by state courts, the regulation would be without legitimate basis. But the regulation goes further. It would require the federal courts to determine the primary applicability of state workers' compensation laws and would create a *federal* exclusive remedy defense for farm worker employers, without regard to the quality or scope of available state benefits. Neither the Congressional legislative record nor the language of AWPA as enacted support that regulation. Consequently, amici urge this Court to invalidate the regulation and preserve the farm worker remedies in full force as Congress intended them to be. As this Court noted in a related context, "[i]t would be a *tour de force* of statutory misinterpretation"[6] to treat an amendment to an act intended to benefit farm workers as a limitation on the rights of farm workers to seek federal court relief and to achieve the full protections of the Act.

C. In the Rare Instance When Congress Intends To Subordinate a Federal Benefits Program to State Workers' Compensation Laws, It Does So in Unmistakable Language Nowhere Found in AWPA

On rare occasions Congress has subordinated a federal program of relief for particular workers and injuries to state workers' compensation benefits for the same persons and injuries. But on those occasions Congress has spoken in unmistakable language. For example, in the War Hazard Compensation Act, 42 U.S.C. § 1701 *et seq.*, Congress, in providing for federal compensation to workers who sustained injuries as a result of "a war-risk hazard," also

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[5] "Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death." *Id.*

[6] *See Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 721 (1980).

authorized workers to choose instead state remedies. But Congress made the choice clear:

> No benefits shall be paid or furnished under the provisions of this subchapter for injury or death to any person who recovers or receives workmen's compensation benefits for the same injury or death under . . . the law of any State . . . .

42 U.S.C. § 1705.

Similarly, in the Black Lung Benefits Act, 30 U.S.C. § 901 *et seq.*, Congress integrated a federal scheme for compensating coal miners with state programs of workers' compensation by prescribing that in those states where the Secretary of Labor found "adequate compensation," 30 U.S.C. § 931(b), workers' claims for benefits "shall be filed pursuant to the applicable State workmen's compensation law . . . ." 30 U.S.C. § 931(a).

There are no such provisions in AWPA, because Congress intended no subordination of federal rights to limited state remedies.

D. State Workers' Compensation Benefits, Where They Are Available at All to Farm Workers, Fall Far Short of the Remedies Congress Intended To Provide in AWPA

While state workers' compensation systems are applauded for offering convenient payment mechanisms for injured industrial workers, these state systems present daunting perplexities to migrant farm workers. By definition, migrant farm workers go from state to state, and there is no uniformity among workers' compensation laws of the states. Some states offer some kinds of workers' compensation remedies to migrant farm workers, but several do not.[7] Some states offer workers' compensation rem-

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[7] *See* 4 A. Larson, *The Law of Workmen's Compensation* App. A (1989).

edies to *certain* farm workers, but not to farm workers employed by smaller farms or by farmers who employ no more than a specified number of workers for no more than a limited period of time,[8] or to farm workers engaged in other than a limited number of agricultural tasks.[9] Those states that provide some workers' compensation remedies to farm workers often question whether injuries sustained in transportation to and from the job site are compensable as "arising out of and in the course of" employment;[10] they also restrict payments to injuries from "accidents" and deny compensation for much intentional conduct which would clearly predicate actual and statutory damage recoveries under AWPA.

Thus, a rule that subordinated AWPA remedies to state workers' compensation laws, whenever some of those laws offered some benefits for some disabilities to some farm workers, would dramatically restrict the scope of the federal act and thrust farm workers into a maze of confusion. Only an outstanding cartographer could chart the proper boundary between AWPA and the various state workers' compensation laws. Lawyers and courts, both federal and state, would long contest the contours of that boundary in an unwelcome reprise of the decades of dispute over the availability of federal and state remedies to longshore-

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[8] *See, e.g.*, Fla. Stat. Ann. § 440.02(13)(c)(2) (West 1981). *See also* 4 A. Larson, *supra* note 7.

[9] *See* 4 A. Larson, *supra* note 7. For instance, the South Dakota workers' compensation statute covers only those farm workers engaged in the operation of "threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters, and seed hullers. . . . " S.D. Codified Laws Ann. § 62-3-16 (1989). The Wyoming workers' compensation statute covers only those farm workers engaged in "power farming." Wyo. Stat. § 27-14-103(d)(viii) (1989).

[10] *See* 1 A. Larson, *supra* note 7 at § 6.10 ("Few groups of statutory words in the history of law have had to bear the weight of such a mountain of interpretation as has been heaped upon this slender foundation").

men and harbor workers injured in maritime employment.[11] And all the while migrant farm workers would continue to serve in near peonage; their living conditions unimproved; their wages unsecured; their injuries unrequited.

The legislative record of AWPA shows that Congress sought to remedy the persistent abuses of farm workers by creating meaningful standards for their protection and by empowering farm workers with self-help legal remedies to enforce the law. The congressional record is entirely one of solicitude for migrant farm workers. Nothing in that legislative history supports a crippling construction of the federal Act whereby, through a kind of perverse and reverse preemption, the exclusive remedy provisions of state workers' compensation laws would blunt the effectiveness of the federal act.

AWPA represents a humane impulse by Congress. The court below respected that impulse. It construed the Act so as to preserve the opportunity of migrant farm workers to enforce their limited rights and to obtain at least a measure of relief from the federal courts. That decision correctly effectuated the intent of Congress and should be affirmed.

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[11] *See, e.g., Sun Ship, Inc.* v. *Pennsylvania*, *supra* note 6; *Nacirema* v. *Johnson*, 396 U.S. 212 (1969); *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114 (1962); *Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272 (1959); *Avondale Marine Ways, Inc.* v. *Henderson*, 346 U.S. 366 (1953); *Davis* v. *Department of Labor and Industries*, 317 U.S. 249 (1942); *Washington* v. *W.C. Dawson & Co.*, 264 U.S. 219 (1924); *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469 (1922); *Western Fuel Co.* v. *Garcia*, 257 U.S. 233 (1921); *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149 (1920); *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917).

II. FLORIDA'S WORKERS' COMPENSATION EXCLUSIVITY PROVISION DOES NOT PURPORT TO BAR A PRIVATE ACTION BROUGHT UNDER AWPA

A. State Exclusivity Provisions Do Not Preclude Employees from Recovering from Other Jurisdictions

The courts consistently support supplemental recoveries under federal programs for worker injuries, notwithstanding exclusive remedy provisions in state workers' compensation laws which may also provide limited coverage for the same injuries. Only unmistakable language by Congress—not present in AWPA—can subordinate federal worker entitlements to state workers' compensation remedies.

Thus, Congress has enacted several statutes designed to protect various categories of workers from workplace injuries and to supplement relief that might be available to those workers under state workers' compensation laws. For example, Congress has enacted workers' relief statutes for longshoremen and harbor workers,[12] seamen[13], federal government employees,[14] railroad workers,[15] military base employees,[16] and handicapped persons.[17] When these workers are injured they often obtain state workers' compensation benefits for job related injuries and then seek additional benefits under one or another of the federal laws. In the federal proceedings, as in the instant case, employers commonly assert election of remedies defenses based on the exclusive remedy provisions of the states'

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[12] Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*

[13] Jones Act, 46 U.S.C. App. § 688.

[14] Federal Employees Compensation Act, 5 U.S.C. § 8101 *et seq.*

[15] Federal Employees Liability Act, 45 U.S.C. § 56 *et seq.*

[16] Defense Base Act, 42 U.S.C. §§ 1651-1654.

[17] Rehabilitation Act of 1973, 29 U.S.C. § 794.

workers' compensation statutes. Uniformly, the courts overrule these defenses, sustain the employees' rights to seek supplemental federal recoveries, and vindicate the congressional solicitude for employee welfare expressed in the various federal statutes.[18]

These decisions often speak in customary terms of federal preemption. But these decisions also reflect this Court's limiting construction of exclusive remedy provisions in state workers' compensation laws, consonant with the teaching that "a State has no legitimate interest" in preventing another jurisdiction "from granting supplemental compensation" to an injured worker. *Thomas* v. *Washington Gas Light Co.*, 448 U.S. 261, 256 (1980); *Industrial Comm. of Wisconsin* v. *McCartin*, 330 U.S. 622 (1947).

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[18] *See, e.g., Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 131 (1962) ("We hold that the acceptance of the [workers' compensation] payments does not constitute an election of the remedy under state law precluding recovery under the Longshoremen's Act."); *Thibodaux* v. *Atlantic Richfield Co.*, 580 F.2d 841, 847 (5th Cir. 1978) (exclusive remedy provisions of Louisiana workers' compensation remedy no bar to Jones Act suit because "an exclusive remedy provision in a state workmen's compensation law cannot be applied when it will conflict with maritime policy and undermine substantive rights afforded by federal maritime law"); *Roberts* v. *City of Plantation*, 558 F.2d 750, 751 (5th Cir. 1977) ("If plaintiff can prove himself entitled to Jones Act recovery, the exclusive remedy provision of Florida's workmen's compensation statutes cannot oust the federal court of its jurisdiction"); *Biggs* v. *Norfolk Dredging Co.*, 360 F.2d 360 (4th Cir. 1966) (Virginia workers' compensation recovery no bar to Jones Act suit); *Hutchings* v. *Erie City and County Library Board of Directors*, 516 F. Supp. 1265, 1273 (W.D. Pa. 1981) ("Pennsylvania's Workmen's Compensation Act does not, in any way, bar the plaintiff from pursuing these essentially federal claims"); *Rosa* v. *Cantrell*, 705 F.2d 1208 (10th Cir. 1982) (exclusivity provisions of Wyoming workmen's compensation law preempted by federal civil rights claim under 42 U.S.C. § 1988); *Rockport Yacht & Supply Co., Inc.* v. *Hollis*, 371 F. Supp. 1229 (S.D. Tex. 1973) (Texas workers' compensation recovery no bar to suit under federal longshoremen's compensation act); *Flying Tiger Lines, Inc.* v. *Landy*, 370 F.2d 46 (9th Cir. 1966) (California workers' compensation recovery no bar to suit under the federal Defense Base Act).

The development of this construction bears brief mention. In *McCartin*, 330 U.S. 622 (1947), an Illinois resident worker injured on the job in Wisconsin recovered workers' compensation payments under the Illinois law. Like the Florida law, the Illinois law contained typical exclusive remedy provisions.[19] Thereafter, the worker sought recovery under the Wisconsin workers' compensation law. This Court, in the absence of "unmistakable language" to the contrary, *id.* at 627-28, construed the Illinois exclusivity provisions so as to bar only other actions by the worker under the common law or statutes *of Illinois* and upheld the federal Constitutional power of Wisconsin to make a supplemental award. *Id.* at 630. The Court announced that its holding was made "in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted [and] *we should not readily interpret such [an exclusive remedy] statute so as to cut off an employee's right to sue under other legislation passed for his benefit.*" *Id.* at 628 (emphasis supplied).

In *Thomas*, 448 U.S. 261 (1980), a District of Columbia resident injured on the job in Virginia recovered under the workers' compensation laws of Virginia. Thereafter, the worker sought additional compensation under a District of Columbia law which made available the procedures and payments of the federal Longshore and Harbor Workers' Compensation Act. Virginia law precluded any recovery additional to Virginia workers' compensation "at common law or otherwise." The employer pleaded the Virginia law as a defense to the District of Columbia action and urged that the District of Columbia was required to

[19] *See Id.* at 627 ("No common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act . . . .").

give full faith and credit to the prior Virginia proceeding and the exclusivity provisions of the Virginia law.

This Court upheld the worker's right to recover supplemental benefits under the federal law and, more generally, eased the burdens on injured workers seeking recoveries from more than one jurisdiction. The Court, under the approach of at least the plurality, ruled that state exclusivity provisions, however drafted, must be limited in effect only to the state of enactment for "a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award . . . ." 448 U.S. at 286.[20]

Entirely consonant with *Thomas*, the Florida statute on its face reflects no Florida interest in denying a worker who is entitled to benefits under the Florida workers' compensation law such supplemental remedies as he might claim from another political entity. The statute limits only what the worker can recover from the *Florida* plan; not what he can recover under an alternate plan.[21]

[20] According to *Thomas*, even if the "unmistakable language" test of *McCartin* survives, only the exclusivity provisions of the Nevada workers' compensation law meet that test. *See id.* at 275 n.21. And even that exclusivity provision speaks only to recoveries "under the laws of any other *state*." Nev. Rev. Stat. § 616.525 (1979) (emphasis supplied). The Nevada statute makes no effort to deny injured workers supplemental benefits under the laws of the federal government.

[21] This matter is addressed by Fla. Stat. Ann. § 440.09(1) (West 1981), which provides in pertinent part:

> When an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this state, the employee or his dependents shall be entitled to compensation if the contract of employment was made in this state, or the employment was principally localized in this state. However, if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total com-

The Florida Supreme Court has acknowledged that under the Florida workers' compensation law, an employee was "permitted to seek recovery in more than one state . . . ." *DeCancino* v. *Eastern Air Lines*, 239 So. 2d 15, 17 (Fla. 1970).[22]

It is of course only fortuitous that the respondents brought their claims for relief under AWPA in a federal court located in the same state from which they had received workers' compensation benefits. If, as the Florida statute, the Florida Supreme Court, and *Thomas* make clear, the respondents could recover supplemental payments under, say, Alabama law in a state court in Alabama, it follows as an *a fortiori* matter that respondents can recover supplemental payments under federal law in a federal court—wherever located. That the federal court is in Florida can have no bearing on the outcome of this dispute.

B. Florida's Exclusivity Provision, Even Where Clearly Applicable, Does Not Bar Actions When the Challenged Conduct Violates Important Federal Policies

Even where a Florida employee seeks a tort recovery for workplace injuries under *Florida* law against a Florida employer—quintessentially at the heart of the exclusivity provision—the Florida Supreme Court has narrowly construed the exclusivity provision so as to allow recovery, where the tortious conduct contravenes important federal policies for the protection of employees in the workplace.

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pensation for the same injury greater than is provided herein.

[22] *See also Follese* v. *Eastern Air Lines*, 271 N.W.2d 824 (Minn. 1978), where an injured worker with contacts both in Florida and Minnesota, but whose workers' compensation claim was barred in Florida by the Florida statute of limitation, was allowed recovery under the Minnesota law, notwithstanding the exclusive remedy provisions of the Florida workers' compensation statute.

Thus, in *Byrd* v. *Richardson-Greenshields Securities, Inc.*, 14 Fla. L. Weekly 549 (Fla. Sup. Ct. Oct. 26, 1989), female employees who were sexually harassed in the workplace sued their employer and sought tort recovery under Florida common law for the infliction of emotional distress. The employer claimed the action was barred by the exclusivity provision of the Florida workers' compensation law. The Florida Supreme Court sustained the employees' right to proceed notwithstanding the exclusivity provision. According to the court, "the present case strongly implicates . . . sexual harassment policies [of federal and state law] and, accordingly, may not be decided by a blind adherence to the exclusivity rule of the workers' compensation statute alone." *Id.* at 550. Using *federal* enactments as its "primary source," and with due regard for the Supremacy Clause, the court found "overwhelming public policy" against sexual harassment, and held that "[a]pplying the exclusivity rule of workers' compensation to preclude any and all tort liability effectively would abrogate this policy . . . and flout Title VII of the Civil Rights Act of 1964." *Id.* at 551.

Thus, this Court's decisions in *Thomas* and *McCartin* along with the Florida Supreme Court's construction of the Florida law require a determination here that notwithstanding respondents' limited recovery of state workers' compensation benefits, they are fully entitled to pursue a supplemental federal court recovery under AWPA.[23] The Florida statute limits a worker's right to a supplemental remedy from his employer, but only if such supplemental

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[23] *See Landry* v. *Carlson Mooring Service*, 643 F.2d 1080, 1085 (5th Cir. 1981) (full faith and credit obligation of federal court under 28 U.S.C. § 1738 toward injured worker's compensation recovery under Texas law no bar to worker's recovery of supplemental benefits under federal Longshore and Harbor Workers' Compensation Act, because "a subsequent recovery under the workers' compensation act of another jurisdiction is proper"). *See also Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715 (1980).

remedy is predicated on *Florida* law. Here, respondents seek a remedy predicated on *federal* law. Further, the Florida exclusive remedy provisions allow a worker to obtain a tort recovery even under *Florida* law where the tortious conduct violates important worker protection policies expressed in federal law. Here the tortious conduct alleged violates just such a federal law. The Florida law is thus not a bar to recovery under AWPA.

III. RESPONDENTS ARE ENTITLED TO REMEDIES UNDER BOTH THE STATE AND FEDERAL REGIMES. IN THE EVENT THE COURT CONSTRUES THE STATE LAW TO APPLY HERE, THE STATE EXCLUSIVE REMEDY PROVISION CLASHES WITH AWPA AND MUST BE PREEMPTED

The test for federal preemption is well established: "In this as in other fields, the question of whether federal law preempts state law 'involves a consideration of whether that law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). *See also Bonito Boats, Inc.* v. *Thundercraft Boats, Inc.*, 109 S. Ct. 971 (1989) (Florida law preempted). Under the Supremacy Clause of the Constitution, no state may enact laws that "give protection of a kind that clashes with the objectives of the federal . . . laws." *Sears, Roebuck & Co.*, v. *Stiffel Co.*, 376 U.S. 225, 231 (1964). Thus, if this Court were to determine that the Florida workers' compensation law bars remedies under the laws of other jurisdictions, those state restrictions would give protection to agricultural employers from federal remedies for violations of AWPA. That would be a head-on clash between the state law and the purposes and objectives of AWPA and preemption would be required.

But the exclusivity provisions of the Florida statute do not limit an injured worker's right to obtain supplemental

payments under a statute of a jurisdiction other than Florida. Further, as noted in section I of this brief, Congress clearly did not intend to subordinate farm worker rights under AWPA to the limited benefits available under state workers' compensation acts. Thus, under the construction of the state and federal statutes presented here, farm workers may exercise rights under *both* statutes and the Florida law does not block the accomplishment of Congress' purposes in AWPA. In these circumstances, there is no question of federal preemption.

In the event, however, the Court determines that the exclusive remedy provision of the Florida law does apply to the facts presented here, then it must be noted that the Court has already indicated the appropriateness of preempting that provision. Thus, in *Sun Ship, Inc.*, v. *Pennsylvania*, 447 U.S. 715 (1980), workers injured in connection with certain ship building and repair enterprises in maritime commerce who were eligible for benefits under the federal Longshore and Harbor Workers' Compensation Act first sought benefits under the Pennsylvania workers' compensation law. The question presented to this Court was whether a state was authorized to make payments to workers under a state compensation scheme for injuries that fell within the coverage of the federal act. This Court determined that the remedial provisions of *both* state and federal statutes could stand together. Further, on the basis of *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 131-32 (1962), the Court ruled that the employees' acceptance of payments under the state law did not constitute an election of remedies precluding recovery under the federal act. 447 U.S. at 723-24.

In light of this ruling, it was unnecessary for the Court to reach any preemption issue. Nevertheless, the Court described preemption as the proper procedure should a case arise where the exclusive remedy provisions of a state workers' compensation law are applied so as to frustrate

workers' claims for relief under a federal statute. According to the Court:

> Most often, state workmen's compensation laws will not be treated as making awards thereunder final or conclusive. *See Calbeck* v. *Travelers Insurance, Co., supra*, [370 U.S.] at 131-132; *Industrial Comm'n* v. *McCartin, supra* [330 U.S. 622] . . . . Admittedly, if a particular state compensation law provision does indisputably declare its awards final, a conflict with the LHWCA may possibly arise where a claimant seeks inferior state benefits in the first instance . . . . [A]lthough the question is not directly before us, we observe that if federal preclusion ever need be implied to cope with this remote contingency, a *less disruptive approach would be to pre-empt the state compensation exclusivity clause* rather than to preempt the entire state compensation statute as appellant suggests.

447 U.S. at 724 n.6 (emphasis supplied).

IV. THE FOURTH CIRCUIT'S DECISION IN *ROMAN* v. *SUNNY SLOPE FARMS, INC.* WAS WRONG IN FAILING TO FOLLOW THE RULE THAT STATE LAW IMMUNITY ONLY OPERATES IN THE SPHERE OF STATE LAW CLAIMS

In *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987), the Fourth Circuit denied an injured farm worker the federal remedies Congress expressly created for his protection in AWPA solely because the worker had accepted limited benefits under South Carolina's workers' compensation law. The *Roman* court principally relied on two cases, *United States* v. *Demko*, 385 U.S. 149 (1966) and *Garvin* v. *Alumax of South Carolina*, 787 F.2d 910 (4th Cir. 1984). Neither case supports the court's decision.

In *Demko*, a federal prisoner injured in a federal penitentiary recovered under 18 U.S.C. § 4126, a federal compensation act wherein Congress provided for federal "compensation to inmates . . . for injuries suffered . . . in any work activity in connection with the maintenance or operation of the institution where confined." The prisoner then sought additional recovery from the United States under the Federal Tort Claims Act, 28 U.S.C. § 1346(b). This Court ruled that 18 U.S.C. § 4126 represented the prisoner's exclusive remedy, because compensation laws enacted by Congress for the benefit of a particular group of workers are generally thought of as a substitute for common law tort actions against the federal government, 385 U.S. at 151-52, and it would be anomalous to infer a congressional purpose to allow the Federal Tort Claims Act to give greater protection to "injured prisoners [than to] all other government employees who are protected exclusively by the Federal Employees' Compensation Act . . . ." *Id.* at 152.[24]

Demko was strictly a conflict between two federal laws reflecting the conflicting expressions of a single legislature. Unlike the instant case, *Demko* presented no conflict between a federal law and the law of a *state*.[25] As the Elev-

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[24] The Court relied on *Johansen* v. *United States*, 343 U.S. 427 (1952) and *Patterson* v. *United States*, 359 U.S. 495 (1959), both requiring the harmonization of two *federal* statutes of equal dignity, one designed specifically to compensate injured crew members on government vessels and one designed generally as a waiver of the government's sovereign immunity. In each case, the Court ruled that the *specific federal* compensation statute provide the worker's exclusive remedy against the United States. According to the Court, there was no evidence that Congress, merely by "put[ting] aside its sovereign armor" in the general statute for certain damage suits, intended to confer substantive rights on claimants additional to those offered "all other Government employees on the same vessel" as provided for in the specific compensation statute. *Johansen*, 343 U.S. at 431 and *Patterson*, 359 U.S. at 496.

[25] Prisoners have traditionally been denied state workers' compensation remedies for injuries sustained in connection with work done in prison. *See* 1c A. Larson, *supra*, note 7 at § 47.31.

enth Circuit ruled in the instant case, *Demko* does not support the argument that a class of workers whose particular workplace problems Congress has acknowledged and sought to remedy in a *federal* scheme, should be limited to the less adequate protections of the laws of the *states*. The congressional legislative record in AWPA clearly reflects that farm workers are yet another group of workers for whom Congress deemed state remedies to be inadequate and for whom Congress created a special federal system of recovery for work-related injuries.

Thus, *Demko* might support a holding that AWPA provides the *exclusive federal* remedy for farm workers. But by no stretch can *Demko* support a holding that AWPA provides *no* federal remedy for farm workers.[26]

The *Roman* court's additional reliance on *Garvin* v. *Alumax of South Carolina, Inc.*, 787 F.2d 910 (4th Cir. 1984) is also misplaced. In *Garvin*, an injured dock worker collected compensation under the federal Longshore and Harbor Workers' Compensation Act. He then sought a tort recovery grounded solely upon state common law negligence against his remote employer, Alumax. For an employee who accepted *state* workers' compensation benefits, the state law "exclude[d] all other rights and remedies" against a remote employer. Relying on *Ferri* v. *Ackerman*, 444 U.S. 193, 198 (1979) ("when state law creates a cause of action, the state is free to define defenses to the claim, including the defense of immunity"), the *Garvin* court upheld Alumax's defense of immunity to the *state* tort suit

[26] The federal law/federal law conflict of *Demko* might arise if, for example, migrant farm workers injured while working in the District of Columbia received compensation benefits under the federal Longshore and Harbor Workers' Compensation Act (the workers' compensation statute for the District of Columbia) and thereafter sought supplemental benefits via a private suit under AWPA. There, in contrast to the instant case, the conflict would be between the exclusive remedy provisions of a *federal* statute (LHWCA) and the particularized farm worker remedies of another *federal* statute (AWPA).

based on the *state* statute. The court deemed it irrelevant to the availability of *state* law immunity to the *state* law claim that had the worker been able to plead a federal cause of action in tort (he could not), Alumax would have had no federal law immunity to such federal lawsuit. According to the *Garvin* court, upholding state law immunity from state tort suits for a remote employer did not frustrate the achievement of the goals of the federal compensation statute, which provided no such immunity, because there was no evidence that Congress meant to create a federal cause of action against remote employers; there was no evidence that Congress meant to deny immunity to a remote employer in *state* cases; and because *state* law immunity would have no application to the assertion of a federal cause of action against the remote employer.

Garvin does not support the result in *Roman* sustaining a *state* law defense to defeat a *federal* law claim. *Garvin* correctly holds—as respondent asserts here—that a state law immunity defense is operative only "in its own sphere." *Id.* at 917.[27]

[27] *See also Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272 (1959) (federal immunity for employer under federal Longshore and Harbor Workers' Compensation Act did not bar employee from maintaining tort suit under state common law against employer who was not immune under the state workers' compensation laws).

CONCLUSION

For the reasons stated, amici respectfully request the Court to affirm the decision of the Eleventh Circuit below.

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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT CO.,
Petitioner,

vs.

RAMSFORD BARRETT, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF AMICI CURIAE FOR TEXAS, CALIFORNIA, AND MASSACHUSETTS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Each of the *amici curiae* states -- the States of California and Texas and the Commonwealth of Massachusetts -- has a provision in its state workers' compensation statute making workers' recovery for personal injuries under the state workers' insurance system the exclusive mechanism for personal injury compensation; each *amicus's* workers' compensation system covers migrant farmworkers. None of the exclusivity provisions in the *amici's* workers' compensation statutes specifies federal causes of action as excluded actions.

The exclusivity section of Texas's current workers' compensation statute provides:

> [Covered] employees . . . shall have no right of action against their employer . . . for damages for personal injuries . . . but . . . shall look for compensation solely to the association[.]

TEX.REV.CIV.STAT.ANN. art. 8306, § 3 (Vernon Supp. 1989).[1] Migrant farmworkers have been covered by the act since 1985. *Id.*, § 2b.[2]

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1 A comprehensive revision of Texas's workers' compensation statute was signed into law on December 13, 1989. Tex. S.B. 1, 71st Leg., 2d Called Sess. (Dec. 11, 1989). Most of its provisions will be effective on January 1, 1991, including the exclusivity provision, § 3.07, and the migrant farmworker coverage provision, § 4.01.

2 *See also* CAL. LAB. CODE § 3602 (West 1989; MASS. GEN. L. ch. 152, §§ 23, 24 (1988), GEN. L. ch. 152, §§ 1(4), 67 (1988).

The *amici* states also have an interest in this case because of the agricultural workers present within their borders. Their presence in Texas is especially large. A recently completed study estimated the total farmworker population in Texas in 1987 to be 513,731. Approximately 56%, or 289,436, of these farmworkers are migrant workers.[3]

Broadly stated, the interest of each *amicus* state is to prevent its principal statutory mechanism for the recompense of injured migrant workers from being transmuted into a contraption destroying federal protection for those same workers.

SUMMARY OF ARGUMENT

This case does not pose a federal preemption problem for the Court to resolve; it poses a statutory construction problem that, when solved, shows that Congress supplemented state workers' compensation protections for migrant farmworkers with a federal right of recovery for personal injuries. In creating a federal right, Congress left undisturbed the state law provisions which make workers' compensation the exclusive method of recovery for personal injury from an employer. It left those provisions undisturbed from two perspectives important to the states.

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3 L. Plascencia, M. Ceballos, & R. Glover, TEXAS FARMWORKER ENUMERATION PROJECT 67 & 79 (Center for the Study of Human Resources, L.B.J. School of Public Affairs, University of Texas at Austin, July 1989). The estimates are based on the total number of individuals in households.

First, it did not preempt them. Second, and more importantly for this case, it did not incorporate them. It simply left them alone and placed aside them, so to speak, a new federal right and remedy.

The petitioners and their supporting *amici* purvey an analysis which creates an insoluble dilemma for themselves by asking that a basic statutory construction principle be applied inconsistently. They argue no preemption because Congress did not express itself clearly enough to preempt state law. They also argue incorporation because Congress clearly expressed its intentions in this regard. The statute, however, reveals no clear intentions on either point, preemption or incorporation. If clearly expressed intention is the test for both points, as the petitioners seem to concede, then their case must fail.

The Department of Labor's effort to fill the statutory gap through a regulatory provision fails because our federal structure does not permit an administrative agency to perform the alchemical function of transforming the silence of a state legislature with regard to federal rights into a proclamation reducing federal rights. However limited it might now be, the Tenth Amendment retains sufficient life to prevent a federal bureaucratic action from making a state legislative action preempt federal legislative action.

ARGUMENT

I. The Migrant and Seasonal Agricultural Worker Protection Act does not limit the right to recovery it provides migrant farmworkers by imposing a state-law based limitation devised without regard to the federally created right.

State legislatures typically do not craft their workers' compensation statutes, exclusivity provisions and all, with an eye toward their effects on federal rights and remedies. Instead, as would be expected in a federal system such as ours, federal and state rights to recovery often exist side-by-side, undisturbed by state legislative efforts to abolish the state right because the federal right exists. *See, e.g., Landry v. Carlson Mooring Service*, 643 F.2d 1080 (5th Cir.), *cert. denied*, 454 U.S. 1123 (1981) (settlement of Texas workers compensation claim is no bar to claim under federal Longshoremen's and Harbor Workers' Compensation Act).

This phenomenon of federalism has not gone unnoticed in the Court. In a workers' compensation case, a realistic appraisal of federalism's effects led to the uncontested observation that "a state legislature seldom focuses on the extraterritorial effect of its enactments[.]" *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 274 (1980) (plurality opinion) (footnote omitted); *see also Northbrook National Insurance Co. v. Brewer*, 110 S.Ct. 297, 301

(1989) (Stevens, J., dissenting) ("[w]orkers' compensation is generally a subject of local interest and control").

Against this state law backdrop, Congress enacted the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 ("AWPA"). A centerpiece of the AWPA is the creation in Section 1854 of a federal private right of action for damages and equitable relief for injured migrant farmworkers. Subpart (b)(2) of the section authorizes judicial consideration of pre-litigation efforts at dispute resolution in assessing damages; however, neither that subpart nor any other provision in the section authorizes a defense to the federal damage action based on the availability of a state workers' compensation exclusive remedy for personal injuries.

The only AWPA reference to state workers' compensation law is in Section 1841(c)(1), where it waives mandatory insurance coverage for employers who transport workers under circumstances where there is state workers' compensation coverage; however, the provision says nothing whatever about creating a state workers' compensation defense to a Section 1854 damage action. It merely establishes the rules for mandatory employer financial protection from Section 1854-based damage actions. State workers' compensation statutes place a ceiling on necessary insurance coverage, not on damages recovery.

Section 1871 makes the AWPA as a "supplement" to state law. Thus, except where explicitly stated, the Act neither supplants nor incorporates state laws such as workers' compensation systems. It adds to their protections and otherwise leaves them untouched. With this clear Congressional directive, and given the limited reach of Section 1841(c)'s language, the federal private right of action created in Section 1854 and the state right of action created in workers' compensation statutes, as limited by their exclusivity provisions, are independent of each other. They coexist, and neither detracts from the other. Any other reading of the AWPA would be at odds with its language, while imparting to state legislators powers which they never contemplated.

II. The constraints of federalism deprive the U.S. Department of Labor of the power to unilaterally convert state legislative silence into a proclamation depriving migrant farmworkers of federal statutory rights and remedies.

Without legislative authorization, the Department of Labor ("DOL") is powerless to restrict a federally created right through rulemaking. The respondents thoroughly address these fundamental administrative law and separation of law principles in Part II of their brief, and *amici* do not revisit the matter here.

Of more fundamental concern to the *amici* is the constitutional damage to federalism

threatened by DOL's regulatory action in creating 29 C.F.R. § 500.122(b).[4] In the face of the AWPA's contrary directives discussed in Part I of this brief, DOL's regulatory action converts state statutory worker protection into preemption of a federal right. Especially in light of the well-recognized inward-directed nature of state statutes such as workers' compensation laws, this conversion clashes with basic federalism principles as *amici* understand them. State legislators simply do not legislate in contemplation of limiting federal rights. The dictates of federalism in the Constitution deny state lawmakers that luxury and, in fact, establish a flow in precisely the opposite direction.

Notwithstanding the broadly stated holdings of *South Carolina v. Regan*, 108 S.Ct. 1355 (1988), and its progenitor, *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), states retain at least a kernel of constitutional protection from federal compulsion under the Tenth Amendment and the federalism principles embodied in it. *Regan* recognized that *Garcia* left open the possibility that "extraordinary defects in the national political process" might limit federal regulation of state activities through the Tenth Amendment. 108 S.Ct. at 1360-61.

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[4] Section 500.122(b) provides: "Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death."

That limit is reached when, without benefit of Congressional direction, the federal bureaucracy extends its regulatory power to snatch from the state its own laws and convert them to a federal use fundamentally at odds with the principles animating the state enactment. *Garcia* forcefully explained to the states that they must find their protection from Congressional intrusion in the national political process and the Constitutional structure under which that process is conducted; however, *Garcia's* attention was devoted to the Congress and the Presidency textually contemplated in the Constitution, not to the vast federal administrative state that has grown up around those institutions, an administrative state which the Founders and citizens did not contemplate when the Tenth Amendment was proposed and adopted.

A federal regulatory action so disconnected from Congressional directives cannot expropriate state law and convert it to a perverse kind of federal use without running afoul of the Tenth Amendment. The states are not so much at the mercy of the federal bureaucracy.

CONCLUSION

The *amici curiae* urge affirmance of the decision of the Eleventh Circuit for the foregoing reasons.

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